COMMUNIST BLOC INTELLIGENCE GATHERING ACTIVITIES ON CAPITOL HILL

HEARING

BEFORE THE

SUBCOMMITTEE ON SECURITY AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 1959

A BILL TO REQUIRE ALL NATIONALS OF COMMUNIST COUNTRIES TO REGISTER WITH THE ATTORNEY GENERAL BEFORE ENGAGING IN CERTAIN ACTIVITIES INVOLVING MEMBERS OF CONGRESS AND CONGRESSIONAL EMPLOYEES, IN ORDER TO PROTECT THE INTERNAL SECURITY OF THE UNITED STATES AND IMPEDE ESPIONAGE

AND

S. 1963

A BILL TO IMPROVE THE INTERNAL SECURITY OF THE UNITED STATES BY CLARIFYING THE NOTIFICATION REQUIREMENTS FOR FOREIGN AGENTS UNDER SECTION 951 OF TITLE 18, UNITED STATES CODE, AND TO INCREASE THE PENALTIES FOR FAILURE TO NOTIFY

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COMMUNIST BLOC INTELLIGENCE GATHERING ACTIVITIES ON CAPITOL HILL

WEDNESDAY, MAY 12, 1982

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:25 a.m., in room 2228, Dirksen Senate Office Building, Senator Jeremiah Denton (chairman of the subcommittee) presiding.

Staff present: Joel S. Lisker, chief counsel and staff director; Bert W. Milling, Jr., counsel; and Fran Wermuth, chief clerk.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. The meeting will come to order.

Today we will hear testimony on two legislative proposals that I introduced on December 15, 1981. S. 1959,[1] which is cosponsored by Chairman Thurmond, is intended to require registration with the Attorney General by Communist bloc nationals who engage in certain political-type activities on Capitol Hill. S. 1963,[1] which is cosponsored by Chairman Thurmond and Senator East, is a bill to require nondiplomatic agents of foreign governments to notify the Attorney General, prior to acting in the United States, of their relationships with their foreign governments. This latter bill is a change from the current practice under section 951 of title 18, United States Code of notifying the Secretary of State. Aside from the change in notifying the Attorney General instead of the Secretary of State, there is an increase in penalties if successful prosecution is achieved.

In a Washington Post article on March 28, 1982, Howie Kurtz detailed activities of the Soviet intelligence services on the Hill. He pointed out the efforts of agents of the KGB and its military counterpart, the GRU, to monitor congressional hearings and to develop contacts with Members and their personal, committee, and subcommittee staffs. The information which the Soviet and other Communist bloc representatives seek is, in many instances, unclassified and even seemingly innocuous. Consequently, many argue that we should not be concerned. However, it is important to note this information often goes to complete a mosaic, which consists of both classified and nonclassified information.

[1] Text of the bill can be found in the appendix.

The significance of the nonclassified information is often difficult to assess by those who do not have the big picture. Furthermore, we are reducing the cost to the Soviets of the intelligence gathering operation by facilitating the delivery of the information through established congressional channels and by giving them unencumbered access. Parenthetically, they would have to spend money and agent time in a lengthier and more difficult effort if we did not so facilitate it.

Mr. Kurtz gave several examples of the Soviet presence on the Hill. On February 4, 1982, at an oversight hearing FBI Director William H. Webster testified before this subcommittee about the growing number of hostile spies in the United States. He said 30 to 40 percent of the approximately 600 Soviet-bloc diplomats, correspondents, and trade officials here have responsibilities for intelligence gathering. Judge Webster then said: "It might be of interest to the chairman to know that this morning there was an official of the Russian embassy present at these hearings." There have been a number of occasions on which that has been the case in this subcommittee.

A second example cited occurred last September when a Soviet diplomat walked into the office of Representative David F. Emery and asked for the Congressman's public statements on his alternative plan for deploying the MX missile. When the Congressman's legislative aide asked who he was, the man identified himself as Yuriy Petrovich Leonov. The aide refused to provide him with the information and later learned Leonov was an agent of the GRU.

That same month, Leonov visited the office of Representative Larry Craig, whose aides also refused to give the statements the Congressman had made that morning about the MX missile. In June, the same Mr. Leonov sat in on hearings about the MX held by the Senate Armed Services Subcommittee on Military Construction and the House Interior Subcommittee on Public Lands. After the Emery incident was publicized, Leonov was apparently sent back to the Soviet Union.

One of the witnesses here this morning, who is seated at the witness table, Representative Don Ritter, will tell us of his encounter last year with Sergey Chetverikov, a counselor at the Soviet Embassy. The Congressman frustrated Mr. Chetverikov's efforts to cultivate him by inviting two of his staff members to accompany them to the Capitol Hill Club for a meeting.

According to Mr. Kurtz, one congressional staff member who recently left a foreign policy subcommittee described a half dozen meetings over an 18-month period with Vladimir Vikulov, a second secretary at the Soviet Embassy. Vikulov would never make an appointment and would appear unannounced to seek documents, mostly reports and hearings on U.S. foreign policy. He was extremely interested in the deployment of intermediate range nuclear missiles in Europe. Although the staff member was unsure about Vikulov's possible intelligence assignment, it was reported that he was, in fact, a member of the KGB.

At the Senate Armed Services Committee, as many as 10 Soviet Embassy and TASS officials have signed to receive reports and hearing transcripts. One of them, reportedly, is Fedor T. Mizinov, an assistant naval attaché, who intelligence sources believe is a

GRU agent. In recent weeks, Mizinov has picked up copies of the 1983 defense budget and a report on the U.S. military posture by the Joint Chiefs of Staff. Although both of these are public documents, they could easily be combined with other information available to the Soviet Union from many sources to provide a picture of U.S. defense capabilities and intentions that is more detailed than we would like them to have, particularly when we consider how little this information costs them in time and expense.

An article entitled "The KGB's Spies in America," which appeared in the November 23, 1981, issue of Newsweek, reports that, although "there is no evidence of any approach to a U.S. Congressman, congressional aides are apparently not off limits." The article goes on to report that in 1971 Boris Sedov, a KGB operative, paid modest fees of $30 and $40 for articles written by Jim Kappus, a political science student working on the staff of Representative Alvin O'Konski of Wisconsin. Congressman O'Konski was at the time a member of the House Armed Services Committee. Sedov's cover was that of a representative of the Novosti press agency.

Again, anyone familiar with the manner in which the KGB recruits an American as an agent would realize that getting to the point of cajoling or negotiating with the American to receive fees for articles should get someone's attention. It is a significant indication that the agent may be progressing toward ultimate compromise of that individual. It is progress like that which is difficult to pick up under the present arrangements. The purpose of S. 1959 is to improve the situation.

In Judge Webster's testimony before this subcommittee on February 4, 1982, he pointed out in substance that the FBI is concerned with the increasing hostile intelligence activities and the attempts to take proprietary, embargoed, and other information out of the country. I believe Judge Webster's concerns to be well founded. In addition to the part which the seemingly innocuous information plays in the overall scheme, there is also the very real danger that these contacts serve as a basis for a future relationship between the intelligence officer and his congressional target. After all, no one can foretell what position a staff aide is likely to hold in 2 years' time.

S. 1959 is, in my view, a vehicle that recognizes and responds to the problem that so many have described. I believe that, as with any piece of proposed legislation, it is far from perfect, but we must begin somewhere. I would, therefore, welcome constructive suggestions from the Departments of Justice and State for changes to the language. In my opinion, there is a pressing need for closer attention to Soviet bloc activity on the Hill. Theodore M. Gardner, the special agent in charge of the FBI's Washington field office, has stated that the Soviet Union's No. 1 target is Congress, which draws more of the KGB's resources than either the White House or the Pentagon.

S. 1959 does not attempt to preclude Soviet bloc political activities on the Hill. It is intended to require very basic information from those engaging in this activity so that the public and those charged with counterintelligence responsibilities will be better informed of the identities of the individuals making the contact, the identities of those approached, and the purpose for the contact.

This is the same type of information that we seek to obtain in varying degrees of detail under the Federal Regulation of Lobbying Act, the Foreign Agents Registration Act, and the Notification Act.

If foreign agents wish to engage in lobbying or information gathering, the burden for disclosure should be upon them and not upon the already overburdened FBI. To me this is a reasonable and prudent step for the protection of our internal security.

Today, we will also consider S. 1963, a bill that I believe will clarify and make more useful the notification procedures for nondiplomatic agents who represent foreign governments.

Title 18, United States Code, section 951, is an act that in its current form requires nondiplomatic agents of foreign governments to notify the Secretary of State prior to acting on behalf of the foreign government they represent.

The problem there is as follows: In all of the decades that the State Department has had the assigned responsibility for receiving these notifications, that department has neither promulgated regulations nor formalized any procedures. The State Department's view seems to have been that this act often puts the department at odds with representatives of client states and, therefore, is an impediment to the carrying out of its responsibilities for foreign relations. The department has also expressed the concern that, given the vast numbers of nondiplomatic individuals who represent foreign governments and who enter and leave the country on relatively short notice, the application and enforcement of the act is impractical.

I believe section 951 of title 18, United States Code is an important statute. Its usefulness has been demonstrated repeatedly in espionage prosecutions, where its violation is often used as a secondary offense and as an investigative predicate for the FBI.

In transferring responsibility for the administration of this statute from the Department of State to the Department of Justice, I believe we will allow the creation of a mechanism which will afford the Department of Justice an opportunity to monitor the activities of those who file notifications. The department's registration unit would be in a position to determine when the activities of an agent cross the threshold of political activities, which would trigger the more substantial registration and disclosure requirements of the Foreign Agents Registration Act. This bill also gives the Attorney General the responsibility to keep the Department of State informed of notifications received.

It should also be noted that the financial sanctions provided for in section 951 of title 18, United States Code, have not kept pace with inflation. I have, therefore, proposed that the penalty for a violation be increased from 10 years imprisonment and/or a $5,000 fine to 10 years imprisonment and/or a $50,000 fine.

Senator Thurmond has requested that his statement be included in the record. He has also indicated his intention to attend the latter part of this hearing.

[The statement of Senator Thurmond follows:]

STATEMENT OF SENATOR STROM THURMOND, CHAIRMAN, COMMITTEE ON THE JUDICIARY

I appreciate the opportunity to participate as an ex officio member of the Subcommittee on Security and Terrorism during the consideration of S. 1959 and S. 1963, both important measures designed to curtail the activities of foreign governments in seeking to influence the activities of Congress or to gain intelligence information from Congress.

As you know, I have joined with the distinguished Subcommittee Chairman in sponsoring both of the proposed laws, and I am therefore particularly interested in the comments and suggestions of the witnesses at the hearing this morning.

Although in a democracy it is impossible, and indeed may not be desirable, to exclude totally any foreign comment or impact on the operations of our political institutions, nevertheless, much should be done that has not been done to guard against the abuse of our system of government by foreign governments that use our open and free society to help perpetuate their own closed totalitarian regimes.

Specifically, I find very distressing the apparent increase in intelligence collection by agents of Communist bloc nations here on Capitol Hill and the recurring reports of contacts between those agents and congressional staff and Members. Although the full scope of foreign intelligence collection on Capitol Hill has not been publicly disclosed, there is already enough in the public record to show that S. 1959 or a similar proposal is needed to prevent Communist bloc intelligence agents from having unfettered access to the halls of Congress.

Similarly, the Foreign Agents Registration Act currently on the books has not proven totally effective in disclosing the lobbing activities of foreign governments that seek to influence the actions and public policies of the people of the United States through contact with Congress. S. 1963 is designed to strengthen the existing law. It is a modest step in the right direction and deserves support and prompt enactment.

I welcome the fine witnesses appearing before the Subcommittee this morning and commend Chairman Denton for preparing this hearing so that the Subcommittee will be in a position to act further on both S. 1959 and S. 1963.

Senator DENTON. Today we have several informed witnesses appearing before the subcommittee.

The first is Congressman Don Ritter of Pennsylvania, who himself was approached by a KGB agent and who has introduced companion legisiation to S. 1959, namely, H.R. 5105, to deal with this significant problem.

Our second witness will be James E. Nolan, Jr., Deputy Assistant Director of the FBI's Intelligence Division.

Our third witness this morning is Mark Richard, Deputy Assistant Attorney General of the Criminal Division of the Department of Justice.

Our final witness is Jeffrey H. Smith, Assistant Legal Adviser for Law Enforcement and Intelligence Affairs of the Department of State.

Welcome, Congressman Ritter. I solicit any opening statement you care to make, sir.

STATEMENT OF HON. DON RITTER, A U.S. REPRESENTATIVE FROM THE STATE OF PENNSYLVANIA

Mr. RITTER. Thank you, Mr. Chairman. It is an honor to be here today and discuss the problem of Soviet information gathering on Capitol Hill. I would like to commend you, Mr. Chairman, for calling attention to the problems we have in this area and for the opportunity to be here today to share with you and with the public my views.

As you know, last November I introduced H.R. 5105, which was the first legislative movement in this area which would require Communist nationals, Soviet bloc, and the definition the State Department uses for Communist countries to register with the Attorney General before engaging in activities involving Members of Congress and staff here on Capitol Hill. This measure is almost identical to Senator Denton's bill, S.1959. In my view, the time has come to reevaluate a situation where Soviet or Soviet bloc nations' information gathering personnel have virtually free access to Capitol Hill and can attend any hearing or meeting and can gather important intelligence and information with little or no effort at all.

I would like briefly to explain the background resulting in my introducing H.R. 5105. First, a bit about my personal experiences. A while back, I had the opportunity to spend about a year in the Soviet Union as an exchange scientist. During that time, I observed firsthand many of the characteristics of the closed Soviet society. I speak Russian and have followed Soviet and East European history for many years.

As a scientist, I have always been concerned about the problem of technology transfer and have voiced strong opinions about the relatively easy terms of West-to-East trade. High technology is really the one advantage that this country and its western industrial partners still have on the Soviets; and yet more and more, particularly Europe and Japan, we seem to be willing to trade it away at a very small cost.

In a few years the Soviets have invaded Afghanistan and repressed the Polish nation, yet trade continues apace with the largest East-West deal looming, the Yamal gas pipeline. So, even if

there were no intelligence gathering by the Soviets here in the States or, particularly, here on Capitol Hill, the overall situation would be less than favorable. But, to add insult to injury, the Soviets are engaged in a massive intelligence campaign to acquire technological and military and governmental information from our open society both through legal and extralegal means. They gather the kind of information freely that in no way could we begin to gain from their closed society.

The experiences that Senator Denton recounted convinced me that something needed to be done to exercise some greater monitoring over the activities of known Soviet agents and known Soviet governmental personnel operating here on Capitol Hill.

Several weeks after the Emery MX episode, I was participating in a hearing that was sponsored by the Helsinki Commission, on which I serve, which was discussing the repression of the Helsinki Monitoring Group Ukraine. Right there sitting in the back of the room with a tape recorder running and taking down every word was TASS news correspondent, so-called TASS news correspondent, Alexander Liutyi. We were discussing sensitive issues associated with the current status of the Helsinki Monitoring Group in Ukraine and really discussing individuals who are presently prominent in opposing the oppressive Soviet treatment of Ukrainians. While this was a public hearing, the information disclosed was current. It was valuable. That afternoon it would be sent back to the higher authorities in the Soviet Union.

I took the opportunity at that time to express my reservations about the presence of this TASS correspondent. After about 10 minutes, he quietly exited the hearing room.

It was at that time that I decided that something is amiss, something is wrong, something needs to be done to exert some rather than zero monitoring over the activities of these Soviet agents and Soviet Government personnel and other associated Communist bloc countries' information gathering networks here on Capitol Hill.

Since my bill has been introduced, other incidents recounted by Senator Denton have arisen. The thing that we see now is that they are beginning to be called to public attention. Before, they were lost in the shuffle.

For example, as recently as 2 or 3 weeks ago, an intern from Senator Weicker's office was seen in the company of known Soviet operatives. While I understand this matter is under investigation by the FBI at this time, it further demonstrates the lengths to which the KGB will go to have access to information on Capitol Hill by legal or extralegal means.

I might also add that I think it is ironic that we allow the KGB free rein in its activities on Capitol Hill, and we restrict our own FBI by having regulations which essentially cause them to break off surveillance of known Soviet agents upon reaching Capitol Hill because they do not have the same monitoring authority that the KGB has on Capitol Hill. Perhaps the FBI witnesses can shed some further light on this problem and perhaps what could be done to address it.

Here is another thing. TASS, Izvestia, Novosti, all have free rein to our press gallery in the Congress; the Voice of American does not. It has a relationship to Federal funds; therefore, it cannot view

the proceedings of the U.S. House of Representatives. But the Soviet media which, as everyone knows, is intimately linked with intelligence operations, has free rein.

There are a couple of common questions that people have about this kind of legislation. First, some people ask: Well, aren't you unwittingly creating a police state by limiting freedom of movement? After all, this is a free country.

Yes, we are a free country. And this bill in no way restricts or prohibits the freedom of movement of Soviet or Soviet-bloc personnel. What it does is provide our very understaffed resources a chance to find out what these people who outnumber us, incidentally, are doing, where they are doing it, and perhaps to get some idea as to what is behind it, why they are doing it. It provides a monitoring capability.

When was the last time, I ask you, our American nationals living and working in Moscow had even the slightest access to the operations of the Soviet Government? This is a very important point. Americans have zero access to the operations of the Soviet Government. The Soviet intelligence activity has the same access to our Government as an American citizen. Why should we continue to make it so easy for them? It is beyond me. To continue to do nothing about their movements is like saying to a gangster who is holding you up: Check the other pocket; there's money there, too.

Why should we continue to roll over and play dead and allow them to strip us of important information and do it without any complaint or effort to control it or reciprocity? It doesn't make any sense.

There is another question that people ask about this kind of legislation: Won't it cause retribution against our own nationals in the U.S.S.R.? As I have mentioned, how could it? Our own nationals, commercial, diplomatic, tourist, are so totally completely restricted in the U.S.S.R. what more could they do? They have virtually no access, while the KGB has unlimited access here. There are no problems with their staffing here. They are fully staffed. We are understaffed. Perhaps this legislation could send a signal to the Soviets that we are tired of one-way streets.

Finally, the question is raised: What about schoolchildren? Children, youngsters of school age who are visiting Capitol Hill with their classmates, would they have to register? If they didn't, would they be deported?

Mr. Chairman, this could be addressed in the bill simply by using an age limit or some other criteria. Besides, most school groups do make advanced contacts with the Hill and make arrangements in advance before they visit.

In conclusion, I believe the time has come, Mr. Chairman, to be far more sensitive to the problem of Soviet agents and Soviet client country agents roaming Capitol Hill at will, gleaning information from our offices, hearings, and meetings.

This legislation represents a reasonable beginning to help bring this problem under control. We simply do not have enough FBI personnel to monitor the number of foreign agents the Soviets have working for them. They outgun us by about 10 to 1, according to some estimates. We may be outgunned, Mr. Chairman, in the number of intelligence officers. We may be outgunned in military

manpower, in tanks, in submarines, in missiles. But we still have the creative brainpower of a free society. We cannot afford to just give away the results of that brainpower to our adversaries. We cannot continue to underestimate the Soviets' hunger for taking away our technological, our communications, advantage.

The sophistication of some of their schemes is remarkable. Several years ago, a group of Soviet aircraft specialists under State Department auspices visited the Boeing, the Lockheed, the McDonnell Douglas factories. They were able to observe our 747's, DC-10's, and L-1011's under construction. Last year a defector reported that these visitors wore special shoes that picked up metal shavings from the factory floors. Analysis of these particles in Moscow may well have identified for the Soviets the alloys they needed to produce their giant troop transport planes. And, as for Capitol Hill, these sneakers don't need special shoes.

Capitol Hill is a target of information gathering by Soviet and Communist-bloc countries. We know that Capitol Hill attracts many young professionals that are friendly, trusting, and open. From discussing this with many knowledgeable people in our intelligence community, there can be times when staff are pliable in the working hands of a professional intelligence agent. This could well be the case involving the recent episode with the intern in Senator Weicker's office.

Again, Mr. Chairman, many thanks for your invitation to appear before this subcommittee and for giving me the opportunity to discuss the legislation. I am convinced that the legislation or some form of approach is urgently needed. I urge the subcommittee to pass it as soon as possible. I will be happy to entertain any questions if there are any.

Senator DENTON. Thank you very much, Congressman Ritter, for your expressions of support for what we are doing. Let me reciprocate. I admire your efforts and am happy that you have a parallel bill pending in the House.

With regard to your examples of penetration of the Hill, the subcommittee's hearings and the subcommittee's offices have been visited by agents, some of whom we have identified: Edward Malayan, Second Secretary, Embassy of the Soviet Union; Vladimir Kotov, Third Secretary, Embassy of the Soviet Union; Jose Delgado, Third Secretary, Cuban Interests Section. Those are just the ones that we know the identities of. Their identities are known to us. I would dare say there might be other occasions on which they or others working on behalf of Communist bloc countries have gathered information.

Mr. RITTER. Mr. Chairman, it would be interesting to know whether or not there was a Soviet Embassy personnel situated in this hearing today.

Senator DENTON. I would not be surprised. I will not ask him to stand if he is here.

You mentioned technology transfer, Congressman Ritter. I, too, am extremely interested in that subject. I know you are aware that the ballistic missile accuracy advantage which we once held over the Soviet Union but which they now have was due to a handover in a trade transaction. It was a terrible compromise of our national interests. The problems of technology transfer are being looked at

now by Senator Roth's Permanent Subcommittee on Investigations under the Government Operations Committee of the Senate. My subcommittee staff is following those proceedings very closely.

It would be mind boggling for the American public to realize the peril we have placed ourselves in as a result of some of the compromises you have outlined in your statement. I am in total agreement with you. The Soviets and their allies, if they are required to register as proposed in S. 1959, will identify themselves so they can be easily surveilled without having to be identified from among many. Then we can determine what they are getting and, from the pattern of activity, what they are interested in. This information can be of some intelligence use aside from some counterintelligence use to us.

In your statement you indicate that, while TASS and Izvestia are allowed in the press gallery, the Voice of America is not. I find this somewhat incredible. I did not know that. Are you speaking of the House or Senate gallery?

Mr. RITTER. I am familiar, Mr. Chairman, with the situation in the House. I assume it would be similar in the Senate.

Senator DENTON. Do you know why they exclude the Voice of America from the House?

Mr. RITTER. I think it is because it has a relationship to Federal funds that it is not given access to these galleries. I think that is the reason.

Senator DENTON. If that were the rationale, public broadcasting should also be excluded since it receives some money from the Federal Government.

Mr. RITTER. Well, that is true. I think it is time, Mr. Chairman, to reexamine that very policy. You commented that we could find out what these people are doing and what these people are up to. That is really our first task with the legislation. But down the road it may well be that some of the doors in our free and open society should not be open to international gangsters. We may wish to even conceive of that. But we are so far down the line that right now we are at a loss simply to know who they are, where they are going, what they are doing, and to what volume and extent the problem exists.

Senator DENTON. We have an open society, but common sense dictates that we would not allow known crooks who have records of robbery and other skullduggery into our homes or businesses unobserved or unmonitored. Indeed, as you say, we might even close the door to them.

I am amazed with those people who are so naive as to compare the U.S. Government with the Soviet Union, as if we are both superpowers of equal good and evil; with those who are saying that, if you have any preparation for war in the way of armed services or weapons, you are simply making a war inevitable. This is foolish but this is very current in today's media. There is a note of unrealistic hysteria which ignores incidents like the Cuban missile crisis in which a realistic and informed President backed down the Soviets through strength and military preparedness. Since I was on a ship in the Caribbean at that time, I know how close we did come to open conflict. But we have never been more prepared for war, as

you might remember, Congressman Ritter, if you are old enough. The American people were looking at the missile silos——

Mr. RITTER. That is a real compliment, Senator.

Senator DENTON [continuing]. Missile silos opening. The media was not unrealistic enough to say that the President was doing the wrong thing. Our vital national interest was immediately threatened as it is threatened today. President Kennedy took the steps and he looked Khrushchev in the eye. By virtue of our preparations, we convinced him it would not be in his interest to keep those intermediate-range ballistic missiles in Cuba. They were removed. So, it is folly to pretend that strength means war or to pretend that there is the same measure good and evil in the governments of the United States and the Soviet Union.

Mr. RITTER. Mr. Chairman, just on that point, if I might add regarding this kind of equivalency that some people feel is the case. One of the realities of Soviet society is that at every single level it has failed outside that level which is concerned with the development of its military power, its police power, its ability to extend influence all over the world by this kind of military and police strength and propaganda. Everything else has failed. Competitively they have failed. They have failed to compete making pants or tractors or shoes or producing food for their own people, not to say anything about exporting these kinds of things. They have surpassed us in the export of arms. They are up around 9 billion as opposed to our 5 billion.

When you come right down to it, they must, in terms of the sophistication of a technological society, they must steal because their own ability to innovate, to be inventive is so constrained by the repression in the society that, in order to get the cutting edges, in order to get the inventions, they have got to steal them, or they have got to be given them in trade agreements. The ball-bearing technology that you mentioned, the kinds of grinding machines that they could not develop on their own, the tolerances were too fine, they got them from us and the West.

Senator DENTON. They not only got the ball-bearings, but they got the manufacturing technology for them, which was the big key.

Mr. RITTER. The grinding capacity to make these.

Senator DENTON. Right.

Mr. RITTER. And this is what allowed them to MIRV their missiles.

So, I think the problem is probably going to get worse rather than better because their system does not allow them that cutting edge of innovation. They have got to steal it.

Senator DENTON. While we are on this subject, I cannot resist saying this for the benefits of those who think the United States would attack the Soviet Union. If we look at the nations which the United States has engaged in war such as Spain over Cuba, Germany, Japan, and Italy, and then take a look at what happened to those whom we defeated after the war, you can see that the United States is not a nation bent on conquest. Then examine the Soviet Union's history and see what has happened to nations which have not necessarily been invaded but just occupied by the armies of the Soviet Union as occurred after World War II. Take a look at the walls which are constructed to contain people within those nations,

which are now Soviet satellites. Examine what is going on in Poland and what is going on in Afghanistan. I cannot understand why the so-called liberals and the so-called conservatives cannot see the realities, as we used to, up until about 1965.

During your year in the Soviet Union as an exchange scientist, did you have opportunities to monitor proceedings of the Soviet Government?

Mr. RITTER. I was an exchange scientist operating out of an institute of the Soviet Academy of Sciences. But let me say that I was exposed to the overall tightness of control of the Soviet society. What you find is that Soviet society against its own people is essentially a conspiracy to control, to monitor, to constrain, to deny, to manipulate. And I guess to those individuals who would say: well, doesn't this legislation create a kind of police state atmosphere here in this country, I would say we precisely need this kind of legislation to protect our rather healthy body from the kinds of conspiratorial practices that the police state Soviet Union will impose not only on its own people but on other societies as well.

In a way, it is a kind of vaccination. It is a kind of antibody. If you have a small malignant tumor in a healthy body, you do something about it before it gets larger. I think that perhaps we are at that stage now.

I believe th[illegible]islation is a first step to bring this problem out into the open, [illegible]ork with Justice, to work with State, to work with other Members of Congress on a bipartisan basis. My bill has 31 sponsors. They are Democrats and Republicans alike. We need to bring this situation out in the open, to address it, to come up with some legislative and administrative answers.

Again, Senator, I thank you very much for the opportunity to participate.

Senator DENTON. We thank you for your testimony.

Were you free to walk into offices of Presidium members to gather copies of statements which they might make on sensitive or controversial issues? Would you be in a position to invite their staff members to lunch and to attempt to develop a personal relationship with them?

Mr. RITTER. You know, you almost want to laugh at that question because it is so totally, totally out of the question. Such blue sky one could never see in the Soviet society. It is almost ridiculous because the answer, of course, is so emphatically no way, nohow.

Senator DENTON. The tremendous proportion of Soviet industrial capacity and labor which is being devoted to the production of military power and which is far beyond any defensive needs whatever, particularly in the case of their navy, seems to escape the observance of too many in our country. In my opinion, this is just as absurd.

Thank you very much, sir. You, like myself, have seen some time behind the Communist walls. It seems that men like Cleaver, Solzhenitsyn, and Sakharov, who are liberals at heart, after some time over there get a sense of relativity which charges them up to express themselves about the realities of Soviet communism. You do that very well and to our good.

Mr. RITTER. I think they have achieved the definition, the characteristic liberal in the classical sense, Senator. Thank you very much.

Senator DENTON. I agree with that. Thank you.

May I ask the following witnesses to come forward: Deputy Assistant Director James E. Nolan, Jr., from the Federal Bureau of Investigation's Intelligence Division; Mark Richard, Deputy Assistant Attorney General, Criminal Division, Department of Justice; John L. Martin, Chief of the Internal Security Section of the Criminal Division; and Jeffrey H. Smith, Assistant Legal Advisor for Law Enforcement and Intelligence Affairs, Department of State.

Please stand and raise your right hands.

Do you swear that the testimony which you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. NOLAN. I do.

Mr. RICHARD. I do.

Mr. MARTIN. I do.

Mr. SMITH. I do.

Senator DENTON. Please be seated.

Do you have an opening statement, Mr. Nolan?

TESTIMONY OF A PANEL CONSISTING OF JAMES E. NOLAN, JR., DEPUTY ASSISTANT DIRECTOR, INTELLIGENCE DIVISION, FEDERAL BUREAU OF INVESTIGATION; MARK RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION; JOHN MARTIN, CHIEF, INTERNAL SECURITY SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE; AND JEFFREY H. SMITH, ASSISTANT LEGAL ADVISER FOR LAW ENFORCEMENT AND INTELLIGENCE AFFAIRS, DEPARTMENT OF STATE

Mr. NOLAN. I do not have an opening statement, Senator. I certainly welcome the opportunity to be here this morning and to provide at least the FBI's concern to you on what we think is a genuine problem. That problem is clearly that there are targets of interest to hostile intelligence services, obviously, on the Hill. They obviously spend a good deal of time and effort to acquire information and to cultivate relationships on the Hill.

The concern expressed by your legislation and indeed by the discussion of it, we think, is a good thing. It is a good thing for awareness. It is a problem which we obviously face and deal with every day.

Senator DENTON. I have another vote on the floor so rather than delay the proceedings, I will defer to Mr. Lisker, who will continue with the questioning. In that way, we can avoid an unnecessary delay. Excuse me.

Mr. LISKER. Mr. Nolan, there are 435 Representatives, 100 Senators, and congressional staff workers number approximately 18,000. There are roughly 600 Soviet bloc diplomats, correspondents, and trade officials operating in the United States. As mentioned in Senator Denton's opening statement, according to Judge Webster, at least 30 to 40 percent, or somewhere between 180 and 240 of these Soviet bloc diplomats, correspondents, and trade officials are be-

lieved to be intelligence agents. That gives us 240 in a field of 18,535.

Would you agree that these numbers present a rather formidable challenge to the FBI with respect to its counterintelligence responsibilities?

Mr. NOLAN. Yes. Certainly the number of foreign intelligence officers that are here is in fact a primary challenge that we face in foreign counterintelligence operations in the FBI. As I said at the beginning, I think any place where you have classified information and where you have people with access to classified information and indeed where you have people who have access to information which may not be classified but is nonetheless sensitive and valuable is an obvious target for foreign services.

I think the experience that we have in counterintelligence has certainly shown that there is a consistent effort by the Soviets and other services to develop contacts on the Hill, to acquire information on the Hill, and to do so in a rather persistent and intensive way. I think there are a number of problems. I think it is difficult, for example, for people, staffers on the Hill or others, are not in a position to tell the difference between a Soviet diplomat and a Soviet KGB officer. They both——

Mr. LISKER. Excuse me, is there a difference?

Mr. NOLAN. Surely.

They both may have the same overt cover. They may both be second secretaries or both scientific attachés. But the purpose of their contact is different. Whereas, even the matters being discussed may sound very similar between the American and the Soviet, the purpose of the conversation is different. So, the KGB officer is perhaps asking the same question about SALT or whatever the public issue is of the day, but his purpose is obviously also that of assessment of the individual, attempting to explore whether there are any avenues that might lead to recruitment approaches. So, I think it is very difficult for people who are not indoctrinated or very well schooled on defensive measures to handle some of these contacts.

Mr. LISKER. Senator Denton is certainly aware that you probably would not want to provide the numbers of Washington field office agents assigned to Soviet bloc counterintelligence. However, he has phrased the question in such a way that perhaps the response could be more general but nevertheless informative.

How large is the FBI's Washington field office in terms of agent manpower approximately?

Mr. NOLAN. Since we have just had a long discussion by Congressman Ritter on what we ought not to give away, it seems to me that this is one of the areas we ought not to give away.

Mr. LISKER. Would you say that there are less than 500 or more than 500 agents?

Mr. NOLAN. I think we will stick here with precisely my answer. The numbers of people that we have working counterintelligence and the percentage of those people in any given office is clearly classified. I do not think that we ought to deal with that in open hearings.

Mr. LISKER. OK.

Mr. NOLAN. What I will say is that obviously a number of our agents in the Washington field do spend a considerable amount of time on the very problems we are discussing this morning.

Mr. LISKER. How many agents does it take to conduct a full-time surveillance of one person, assuming three shifts?

Mr. NOLAN. I think you have to make a lot of assumptions on that one. You have to factor in all sorts of conditions; that is, how skillful is the person you are surveilling in knowing he is being surveilled, or does he suspect he is going to be surveilled, and how trained an officer is he, where he is traveling, day, night. So, I am not sure there is a precise formula. But, obviously, to conduct any kind of sophisticated physical surveillance takes several people to cover a single individual.

Mr. LISKER. Several people per shift or several people in an entire day?

Mr. NOLAN. It requires several people so long as the surveillance is being maintained.

Mr. LISKER. So, we multiply it by three, whatever the number would be?

Mr. NOLAN. Correct.

Mr. LISKER. If we assume that we needed between, say, 2 to 4 people for each shift, that would be 6 to 12 per individual per day. Now, there are 240 Soviet suspected intelligence agents. Does that suggest the difficulty with conducting full-time surveillance of these agents as they go about their business?

Mr. NOLAN. There is no way and indeed there is no effort by the FBI to surveil on a 24-hour basis every Soviet, Soviet bloc, or other intelligence service representative in the United States. It is simply not physically possible, and it is not done.

I think that is one of the reasons it is important that those Americans who have contacts with such individuals volunteer that information, either to offices of security if they have such offices where they are employed, or if they volunteer it directly to us.

Mr. LISKER. I think we have other questions on that specific point which will come up a little later.

What assurances can the FBI give that Soviet bloc agents are not at this very moment contacting individuals on seemingly routine matters for purposes of making the assessment for future approach, which you referred to a few moments ago?

Mr. NOLAN. I think it is reasonable to assume that at the moment there are probably several foreign intelligence officers doing precisely that in various locales. That is, after all, what they are here for.

Mr. LISKER. Does the Bureau believe it is aware of all contacts by hostile intelligence services with congressional Members or staffs? If so, generally how do you become aware of such contacts? If not, would it be of assistance to the FBI in meeting its responsibilities to have advance notice of a meeting or contact by a Soviet bloc diplomat, trade official, or journalist with a Member of Congress or a congressional staff person?

Mr. NOLAN. It certainly would be of great assistance to be notified. I guess we certainly are not aware of every contact. You gave the numbers of the people employed in various areas on Capitol Hill. It is a pretty formidable number of people. A number of them

have quite a number of contacts, obviously quite legitimate contacts with a number of foreign establishments in Washington. But we do become aware, obviously, of some contacts. If we believe they are of counterintelligence interest, we obviously pursue them.

Mr. LISKER. When a staff person is hired, to the best of our knowledge, there is no central personnel or security office which alerts that person as a matter of course with respect to possible pitfalls of associations or contacts with a representative or employee of a Communist bloc country. We understand that the FBI does provide briefings when requested to do so. But, given the lack of a uniform policy in the various congressional offices, do you think the Bureau should affirmatively seek to offer these briefings without waiting to be invited to do so? Or can you suggest some other possible mechanism by which the word can be put out on these pitfalls to which we have referred?

Mr. NOLAN. In the first area, we certainly do give a number of briefings, awareness briefings, both to committees and indeed to individual Members or members of their staffs. But I would certainly think a more formalized mechanism would be an improvement.

I also think that it would be useful for the Congress to examine its own security procedures. I think there is a pretty widespread example in both the executive and in industry where offices of security are an essential ingredient where people have access to classified information and where classified information is stored.

I think it would be extremely useful if there were some similar sort of mechanism here where people could report contacts, where foreign travel to Eastern Europe might be reported, where arrangements could be made to insure that briefings are current and up to date.

Mr. LISKER. Can you tell us how many such briefings have been given to how many of the 18,435 people in the last 2 years?

Mr. NOLAN. No, I do not have that figure in front of me. I am sure we can supply it. We do have a fair number of both formal briefings and informal briefings in the sense of interviewing or following a contact.

Mr. LISKER. I think it would be useful if you could provide those numbers. We will probably have additional questions at the end of today's session where we will ask that question specifically and give you the opportunity to provide the detailed response. We feel confident the FBI must maintain those statistics, I would think.

Mr. NOLAN. I think the difficulty is that, where it is pretty easy to give a number of multiple or large-group briefings, there are a large number of smaller briefings which take place which, to my knowledge, are not statistically compiled.

Mr. LISKER. Perhaps an estimate would suffice in that situation.

When you learn through other means of Soviet bloc contacts with a Member or staff person, do you often encounter any resistance to an offer to brief the Member or staff person?

Mr. NOLAN. No. It is very rare that we would ever encounter any resistance. Normally, we discuss such contact first with the Member or chairman of the committee and request his concurrence to interview the individual. That is almost universally met with assistance and support.

Mr. LISKER. Do you believe that every Member of Congress or professional staff person reports contacts made by Soviet bloc representatives which the staffs themselves do not initiate?

Mr. NOLAN. They certainly do not report them to us. Whether they report them to the Member, if it is a member of the staff, I have no way of knowing. It is quite clear that they do not universally and totally report them to us.

Mr. LISKER. How many reports would you estimate that the Bureau in its New York and Washington field offices get on a daily basis from either staff people traveling to New York or based on contacts initiated here with diplomatic personnel?

Mr. NOLAN. I would say that there is probably almost on a daily basis in which we are discussing or interviewing various people who had such contacts on the Hill. Many of those are volunteered by the office themselves. Some others are developed by us in the course of an investigation. But it is certainly a daily practice. Again, I do not have any statistics.

Mr. LISKER. Would that be a statistic that could be provided in general terms if we were to ask you a separate question on that?

Mr. NOLAN. I do not think such a statistic is retrievable.

Mr. LISKER. I see.

Because of a lack of space, many of the offices up here require a bullpen type of physical setup where staff employees, some of whom have security clearances and some of whom do not, share this common space. This means that, while an employee may himself have a clearance or access to classified information, there is some likelihood that others in his immediate vicinity might not have that clearance and access. Given the abundance of copying machines, the lack of office security, and the fact that many of these offices open onto corridors to which the public has access, and assuming that an employee who has classified information does not always put it in the safe when he leaves his desk for one reason or another, do you think that there is a risk of compromise to such classified material and, if so, how would you characterize the risk of compromise to such classified material?

Mr. NOLAN. You seem to have described a security officer's nightmare. Obviously, if classified material is left unattended, if it is left in insecure space, you would virtually have to presume it had been compromised. So, the situation which you describe, I think, would be alarming to anyone who had the responsibility for the maintenance of classified and secure material.

Mr. LISKER. The problem seems to be in the personal offices, no one has that responsibility. It is left up to the individual with the clearance.

Mr. NOLAN. I think that is precisely why I was at least suggesting that one avenue to look at might be some kind of security and uniform security procedures to examine the need for maintaining classified information other than in perhaps central locations where it can be reviewed by those who have clearances and their access to it can be documented. To proliferate the information through a number of offices where security is perhaps questionable is not the best security procedure.

Mr. LISKER. How many investigations has the FBI opened in the last 5 years on approaches by Soviet bloc nationals to Capitol Hill

personnel? Would you say, less than 10, between 10 and 20, between 20 and 40, more than 40. Do you have any idea?

Mr. NOLAN. I have an idea, and I do not think it is a figure which ought to be disclosed. I will tell you why. What we are dealing with, obviously, is a process by a foreign intelligence service of making contacts. They clearly know how many contacts they have made. I do not think it serves any useful purpose for us to state publicly how many of their operations we know about or how many we have come across. I think it is not a useful public figure to give.

Mr. LISKER. Would you be willing to provide that in a classified response?

Mr. NOLAN. Certainly.

Mr. LISKER. Very good.

Congressman Ritter has in his opening statement referred to a recent investigation of a staffer in a Senator's office. Are you familiar with the investigation to which he has referred?

Mr. NOLAN. Yes, I am.

Mr. LISKER. Has the FBI concluded its investigation of the individual involved?

Mr. NOLAN. We have concluded our investigation. I really do not believe it would be appropriate to go beyond that in talking about any individual case. I think privacy considerations really ought to prevail and that we ought not to discuss individual and specific cases.

Mr. LISKER. Without mentioning the individual's name or even the Senator's name at this point, although, of course, it has been mentioned at the outset, can you tell us whether this case has been presented to the Department of Justice for a prosecutive opinion?

Mr. NOLAN. I think it is a little late to go back and close the door. So, I think we are in fact talking about a specific incident which has been well reported in the press. The normal practice on completion of investigation would be to provide the results of the investigation to the Department of Justice and that is precisely what we will do. But, again, I do not think one should speak, and I certainly will not speak, on any individual case.

Mr. LISKER. I understand completely.

If the impediments which S. 1959 creates are in fact created, would not this compel the Soviets to hire Americans as intermediaries to do the work for them, assuming that the work needs to be done and they are in a difficult position to do the work themselves?

Mr. NOLAN. I do not think the Soviets have to be compelled to hire Americans to do the work for them, but I think that is indeed one of the principal tasks of their intelligence services, to find individuals who will work for them. Certainly, to any degree that you would remove information from being openly obtained, it does force people to go and to acquire it or attempt to acquire it clandestinely. So, to the degree you close any avenue or open information and that information is still sought by a foreign service, yes, they would have to do it through covert means.

Mr. LISKER. Assuming that the information that they are seeking is in the category of public information for the most part which fits into this mosaic that Senator Denton described, why could not the Embassy retain counsel in an open relationship of attorney-client

or agent-principal, in the best sense of the words, to develop the information for them and just provide it on a continuing basis. I mean, if we are talking about open documents.

Mr. NOLAN. If you are talking about open information that is available, there are probably many ways in which they can obtain open information.

Mr. LISKER. I suppose the point of this question is that, if we were somehow to drive the Soviets and their colleagues into dealing with U.S. persons to develop the information, that could create the type of agency relationship conceivably where they would have to either register under the Foreign Agents Act or under some other statute, giving the FBI and the Department of Justice the advantage of being able to examine their books and records at reasonable times and to require disclosure of the nature of the relationship, the financial arrangements, and so on.

Mr. NOLAN. It is indeed possible.

Mr. LISKER. Now let's proceed to a question pertaining to S. 1963. If a police official of a foreign government comes to the United States to work on a case for his government, not a joint case but a case exclusively for his government, for example, a Royal Canadian Mounted Police officer in a narcotics case where the RCMP has the only real investigative interest, comes here to work on leads with the knowledge of the FBI, does this police agent directly notify the Department of State of his relationship with the foreign government, the fact that he is a nondiplomatic agent, and so on, to satisfy the requirements of 18 U.S.C. 951?

Mr. NOLAN. In some cases his government, the Embassy here will directly notify the Department of State. In other cases it is notified through us, or whatever element of the U.S. law enforcement, Federal law enforcement he is working with.

Mr. LISKER. Assuming that there might be secret elements to the investigation, how is the secrecy protected where the RCMP agent is faced with this notification requirement by creating, in a sense, a public document for the Department of State? How is the integrity of the investigation protected in terms of its confidentiality?

Mr. NOLAN. We can certainly notify the Department of State that an individual is coming in to conduct an inquiry, either with us or with our knowledge, without revealing to the Department the extent or the scope of what that activity is. Or, if necessary, we can do it in a classified way to certain officials.

Mr. LISKER. So, the Federal Bureau of Investigation would in the first instance receive the information, and they would notify the Secretary of State? Would that satisfy the requirements of 18 U.S.C. 951?

Mr. NOLAN. Yes. In a number of cases that is what we have done.

Mr. LISKER. In other words, it is your position that the burden of notification is not on the individual directly to the Department of State, but he can notify a second agency of the U.S. Government which in turn makes the ultimate notification?

Mr. NOLAN. I will let my legal counsel over here answer that. He knows it better than I do. But the practice, if the individual is not here himself yet to so notify, we have notified them in advance.

Mr. LISKER. Do you want to comment, Mr. Richard, at this point? Or do you want to wait until I ask you the question?

Mr. RICHARD. At your pleasure. Let me just say that notification to the FBI in the context in which you place it and in turn notification by the Bureau to the State Department would satisfy the objectives of the statute and from an enforcement perspective would accomplish all that we would seek to accomplish by that statute.

Mr. LISKER. So that the Justice Department would not consider prosecution in such a case for what might best be described as a technical violation?

Mr. RICHARD. That is right.

Mr. LISKER. Mr. Nolan, I think this completes the questions which the Senator intended to ask you directly. But I believe that there may be other questions where we would seek your assistance. So, if you will remain, we will then proceed with Mr. Smith from the Department of State. Mr. Smith, do you have an opening statement?

Mr. SMITH. I do have an opening statement, but it was prepared on the assumption that Mr. Richard would speak first.

Mr. LISKER. I see.

Mr. SMITH. I can go ahead and summarize my statement, or you can take Mr. Richard first.

Mr. LISKER. Why don't we not do that so it will flow. Mr. Richard, would you proceed with your statement?

Mr. RICHARD. Thank you, Mr. Lisker. It is a pleasure to be here testifying on behalf of the Criminal Division of the Department of Justice.

Let me begin by noting that I have a prepared statement and with your concurrence I will submit it for the record.

Mr. LISKER. Without objection, it will be inserted.

Mr. RICHARD. Let me begin by indicating to you that the Department is sensitive to the problems articulated by prior witnesses and the concerns sought to be addressed by S. 1959 and S. 1963.

While we have problems with both bills, which I will briefly summarize, at the outset I would want to express our desire and commitment to work with the committee and staff to devise effective responses to these most serious problems.

Let me begin by commenting on S. 1963, which is designed to clarify requirements for foreign agents under 18 U.S.C. 951 and to increase penalties under that act. We endorse and support the transfer of jurisdiction of this act to the Department of Justice from the Department of State. We think it makes for greater enforcement efficiency and complements overall the registration system set forth in the Foreign Agents Registration Act, which is now administered by the Criminal Division of the Department of Justice.

We also support the concept of increasing the penalty under 951 from a $5,000 fine to $50,000, although we would point out that it would appear to us that any attempt to address the penalty provisions with respect to the fine aspects should be done with an eye toward related statutes so as to make them consistent and in line with each other. The inflationary factor that you referred to in your opening statement, Mr. Chairman, is a real factor, but it is not confined, obviously, to the 951 statute but permeates the whole area and in fact the whole code.

With respect to 1963, we do believe that the act should define the term "agent of a foreign government." While we have no proposed definition to submit to you at this point, we stand ready to work with the committee in attempting to devise a definition of that term. We think it would be helpful to have a definition spelled out in the statute, and it would prevent potential litigation on that point in the future.

With respect to the provision of 1959, here we have serious reservations about the current draft. We believe it is overly broad in terms of persons covered as well as places and communications to be covered.

We have a variety of specific concerns which are spelled out in the statement. Let me just say in general that it appears to us that we must jointly seek to define the problem more precisely. Listening to the testimony here earlier today, it became unclear to me whether our objective is to deny access to public source information to Soviet agents, to increase their cost of gathering such information, to enhance our ability to monitor their activities, to frustrate recruitment efforts by the Soviets and their agents, or all of these factors.

Basically, I think in fashioning our response—and a response is needed to this serious problem—I think we have to articulate what our objectives are. I would submit that there are a variety of potential enforcement responses that are available and should be considered in this regard. Some of the responses, obviously, need not necessarily take a legislative form. Possibly, a combination of responses to the problem is indicated rather than one overall or global response.

Along these lines, I would extend to the committee an opportunity to jointly work with you in defining the extent of the problem and devising strategies for effectively coping with it.

[Senator Denton returned to the hearing.]

In conclusion, Mr. Chairman, that summarizes in an opening fashion my remarks. As I indicated, more detailed comments on the bill are contained in the statement. Thank you, Mr. Chairman.

Senator DENTON. Thank you, Mr. Richard. We look forward to working out the still unresolved imperfections in this bill which I alluded to in my opening statement. We will work closely with you to achieve as good a piece of legislation as possible.

Let's turn first to S. 1963. Regarding the need for Congress to define "agent of a foreign government" in S. 1630, which was one effort to recodify the criminal law favored by the Department of Justice, agent is defined as "a person authorized to act on behalf of another person or government and, in the case of an organization or a government, includes, (a) a partner, director, officer, manager, and representative, and (b) except for the purpose of receipt of service or process, a servant and employee."

Is this the definition of agent which you propose to use in the context of part B—section 152, which is the recodification of 18 U.S.C. 951 as found on page 336 of S. 1630? If not, why has not the Department proposed a definition of "agent of a foreign government" in its criminal code reform bill?

Mr. RICHARD. Mr. Chairman, I do not know precisely whether the problem was addressed at the time of our efforts to seek recodi-

fication of the code. Let me just say that I suspect that, if the problem was addressed, it was determined that, rather than attempt in the context of the code to interject what could in fact be a fairly controversial provision, it was decided to leave, in essence, 951 as it currently stands. What I am suggesting is that, if we are to amend and deal with 951 at this time, it would be helpful if we are addressing all of the problems accompanying 951 and the concept of foreign agents in general, to try to fashion a definition for the statute.

I am not suggesting that the absence of a definition in the statute would be some sort of constitutional barrier or any major defect. I am suggesting, though, that it might be helpful in terms of future litigation to do it there.[1]

Senator DENTON. In your statement you manifested some confusion as to the intent. It may be that the verbiage of S. 1959 is such as to confuse you, but I thought we went to some lengths to state that we were not trying to deny access. It was brought up by Congressman Ritter that maybe beyond the context of the consideration of these two bills there may be some instances, in his opinion, when access might be denied in some case or other. But these two bills are simply aimed at the self-identification by these people, making it a little easier to keep track of them.

Beyond that, the deportation in S. 1959 or the fine and imprisonment under S. 1963 would be levied only if they failed to register in accordance with these two bills.

Mr. RICHARD. I appreciate that, Mr. Chairman. The purpose of the bill itself (S. 1959)—read only narrowly—is to accomplish what you indicate. I am suggesting that in the earlier testimony and discussion there was some suggestion that there were a variety of objectives sought to be accomplished in dealing with the problem, that the problem had a variety of facets. One of the objectives I thought I heard was to possibly increase the cost—to make it more difficult and cumbersome—for the Soviets to secure access to otherwise readily available public information.

Senator DENTON. They would be caught more often. Therefore, the FBI would be able to identify and if necessary track these individuals. Compromise would be more difficult as the FBI would be more alert to the situation. Therefore, in order to achieve the same number of compromises, the Soviets would have to employ more people. It would just cost them more money. That is what is meant.

Mr. RICHARD. I certainly, Mr. Chairman, do not quarrel with that. Taken to its logical extreme, we have concerns about the enforcement mechanism, if you will, depending on the number of contacts and the number of potential filings. The volume may be quite high, which may pose additional problems from an enforcement context in dealing with it.

My suggestion again is, recognizing that there is a serious problem, is this the best method for approaching it? Are there conceivably less burdensome alternatives, burdensome to us, for accomplishing the same objective?

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[1] Subsequent to the hearing, the Department of Justice furnished the subcommittee with a proposed definition of "agent of a foreign government," which is included in the appendix.

Senator DENTON. We are aware, as I said earlier, that in S. 1959 we do not have a perfect draft here yet. We have, for example, an alternative method of achieving this desired result by means of a concurrent resolution by which the Clerk of the House of Representatives or the Secretary of the Senate would be the ones upon whom the onus would fall for receiving these registrations.

So, we are open to any suggestions and recommendations that clear the bill with respect to any loose ends that you perceive.

Returning to S. 1963, Mr. Lisker has a question for you.

Mr. LISKER. In your recodification proposal you did change the receiving agency from the Department of State to the Attorney General. That was done.

Mr. RICHARD. Yes.

Mr. LISKER. And there is a definition of "agent" which is a carryover definition. The only point is that, if it was important to have "agent of a foreign government" defined with respect to section 951 of title 18, why did not the Department of Justice define it at that time?

Mr. RICHARD. As I tried to indicate, Mr. Lisker, I do not know precisely whether the issue was addressed. The code, of course, contains numerous provisions, and whether this particular issue was focused on I do not know. If it was, I speculate that the decision was made that attempting to fashion the definition and inserting it in the proposed code would jeopardize, if you will, the likelihood of not the code in general but create some additional controversy where the determination was made it was not worth it, worth the effort at that point.

What I am suggesting is, if we are taking that provision out of the code approach and dealing with it separately, that it would, in my judgment and in our judgment at the Department, be an opportune time to address that issue.

Senator DENTON. Is it fair to say that we have a commitment from you to jointly pursue some kind of result here in terms of legislation?

Mr. RICHARD. Yes, definitely.

Mr. Chairman, if I may add, I possibly said yes a little prematurely. Certainly with respect to S. 1963, the Department supports the transfer of the jurisdiction of 951 to the division, the Criminal Division of the Department of Justice.

With respect to a legislative approach to the problem sought to be addressed by S. 1959, what I was suggesting was that we meet at the staff level and attempt to identify more precisely what we are seeking to accomplish and to attempt to reach a consensus that a legislative approach to the problem is in fact the appropriate response. So, with respect to committing the Department at this point to support a legislative approach for addressing the problem, my answer at this point is one of it depends on what we develop.

Senator DENTON. For the record, as we understand the Department's position in this matter, it anticipates that S. 1959 would antagonize our Communist "friends" and result in actions which could be fairly termed retaliatory. Is that a fair statement?

Mr. RICHARD. This is one of many considerations that I think has to be factored in evaluating this whole problem: What is the anticipated response, if any, from the Soviets? I certainly am not sug-

gesting that that aspect alone suggests that we should not go forward. It is a consideration that we should be aware of and at least factor into the evaluation.

Senator DENTON. It appears to me that we have a distorted and grotesque reciprocity on this, to say the least. Three or four Americans in the Soviet Union tried to unfurl a propeace, antiwar, antinuclear banner the other day, and they could not even get it unfurled. They were just taken off the streets. We have had hearings about Cuban agents moving into Florida, with a defector assuring us that the principal objective of Cuba is to subvert the United States. These agents are being directed from the Soviet Union through a KGB general in Havana who controls the DGI. These agents are walking all over the streets of Florida. The openness of our local as well as Federal governments' activities is total. But even tourists in the Soviet Union are watched.

It seems to be almost absurd to talk about retaliation. I am sure there are things that I do not understand about it that you do; they can go even further, if that is what you mean. But I do not think that they are doing anything in our interest now anyway. I do not have any question about what their international orientation is.

Mr. RICHARD. I am not suggesting that they would necessarily, one, retaliate, if you will. Two, nor am I suggesting that on a strictly reciprocal basis they could retaliate because, obviously, we do not already enjoy the same types of access to their officials that they enjoy as to our officials. However, it is my understanding, and may be my colleague from the State Department would be better able to address it, that retaliatory moves by the Soviets in alternative spheres of activities is not beyond the realm of possibility. Again, if that be an accurate description of Soviet procedures and likely actions, it is something that is worthy of at least being factored into the overall assessment.

I am not suggesting that that alone should dissuade us from going forward, by any means.

Senator DENTON. Well, I think it is a valid objective of any nation to try to protect itself against intelligence activities of a state which is disposed against it. They take those measures much more pronouncedly and to a greater degree and with almost no concern about freedom. Their own citizens indeed scarcely enjoy that. I have observed that. So, it just seems an odd concern to me.

Mr. RICHARD. Again, let me make it perfectly clear that our opposition to the bill at this point was not predicated on that observation, concern with possible retaliatory methods. It was one factor which we pointed to in anticipating the impact, the potential impact as a result of possible passage of the act in its current form.

Senator DENTON. With reference to the term "national" as used in S. 1959 as presently drafted, list any people or categories of people that would be included in that class that the Department feels should not be. Can you think of any people that should be excluded who would be covered as the bill is presently written? Give the reasons for each category why the department feels they should not give notice as required by the bill? For example, I can think maybe of school children from the Soviet Union who might be visiting the Hill. But I would see no objection to their registering so we know where they are, just to keep track of them, nothing

else. There is no harm in this registration requirement that I can see.

I am just trying to get some idea of the nature of the concern about the difficulty of implementing the sanctions if they do not register, that sort of thing. You have raised this concern in your statement.

Mr. RICHARD. If we are talking about the registration system envisioned in S. 1959, I am not sure, for example, in addition to particular children or classes of individuals whether we may very well wish to consider where they want to go within the Hill. There may be certain committee activities, certain functions here that we may wish to say would not warrant registration.

It is those nuances that could best be worked out through the dialog I have suggested.

I do not know whether the concerns remain the same, depending on what the purpose of the intended contact is, and so forth.

Senator DENTON. Would not that question come up after the fact? I mean, they register. If it were frivolous or irrelevant activity which they observed or attended, there would not be any problem.

Mr. RICHARD. Again, this then falls into what is our objective in the registration system. If it is to monitor their activities, if this is a significant objective, then the mere fact that they are attending a function which we all recognize in and of itself is so innocuous that we would not want to otherwise know about it but for monitoring purposes we might.

Again, this is why I suggest we have to clearly define what our objectives are.

Senator DENTON. Well, identification of them as agents working for a Communist government, identification and registration is what we are insuring here. That would facilitate monitoring if that were the choice of the FBI after being notified of their activities through registration. Right now it is difficult for them to find out much with the shortages of manpower, which has been brought out in their testimony.

Mr. RICHARD. That is right, except in S. 1959, as I recall, currently worded is not limited just to agents of the Communist countries. S. 1959 would reach any Communist national or a national of a Communist country. And that would be the predicate for triggering the registration requirement and not their status as an agent of the Communist country.

With respect to regulations that the Department would promulgate if we receive the authority under the act, Senator, I am not sure we have addressed this in any comprehensive fashion. There very well may be categories that we would want to carve out pursuant to regulation, but I am not in a position to off the top of my head say which those categories might be.

Senator DENTON. S. 1959 would require that notification be given to the Department of Justice prior to certain activity on the Hill. Is such information presently available or being compiled anywhere else that the Department is aware of? In other words, would the information required under S. 1959 be duplicative of such information already being accumulated? If so, where is that information being compiled?

Mr. RICHARD. By and large, it is not duplicated, to my knowledge. There may conceivably be some overlap in some foreign agent registration situations. Some information may be picked up at the present time under the alien registration requirements of title 8. By and large, the type of activities that would be presumably reported under S. 1959, to my knowledge, are not elsewhere reported at the present time.

Senator DENTON. In what way, if any, would the informational requirements of S. 1959 duplicate the existing requirement of the Alien Registration Act?

Mr. RICHARD. Well, just the status of the individual as being in the country and being an admitted alien or national of the Communist country.

Senator DENTON. But the Alien Registration Act does not address Capitol Hill activities.

Under S. 1959, not all nationals would register, just those who want to do that Capitol Hill activity.

Mr. RICHARD. That is correct.

Senator DENTON. In what ways, if any, will the enactment of S. 1959 adversely impact on any treaty obligations of the United States or customary international law?

Mr. RICHARD. It is my understanding that there are at least arguably some treaties that may set forth obligations. The Helsinki accords come to mind as a potential area where we have obligations dealing with treatment of media personnel and the like. We are not just talking about provisions dealing with broad categories of individuals. I think conceivably some of the UNESCO treaties may have application. Possibly my colleague from the State Department could better articulate these. Again, it is an area that we should be sensitive to and fully explore before we go forward along the lines set forth in S. 1959.

Senator DENTON. I believe we can establish that this might be helpful for the FBI. I agree that there might be some kind of charge that could be made under the Helsinki accords, but the invasion of Afghanistan, for example, would somewhat dwarf this minuscule help that we would be affording our counterintelligence agents, I would think.

Again, with reference to S. 1963, does registration under the Foreign Agents Act of 1938, as amended, satisfy the requirements of 18 U.S.C. 951?

Mr. RICHARD. Does it require——

Senator DENTON. Does it satisfy those requirements?

Mr. RICHARD. No.

Senator DENTON. Does notification to a second agency such as the Department of Justice satisfy the notification to the Secretary of State? Or must that notification be made separately?

Mr. RICHARD. As I indicated previously, literally speaking, notification to the Secretary of State would be required. Given certain circumstances, I am sure we would view the statute as being satisfied from a prosecutorial point of view where an enforcement agency had knowledge and was the conduit for passing on the information at State.

Senator DENTON. Is notice to one branch of the executive sufficient to satisfy the Department of State notification provisions?

Mr. RICHARD. I am sorry, Senator?

Senator DENTON. Is notice to one branch of the executive sufficient to satisfy the Department of State notification provisions? We may have touched on this question already.

Mr. RICHARD. The procedure under FARA, as I understand it, is that the registration goes over to State. Legally speaking, in the abstract, is notice to one agency notice to all agencies? It depends.

Senator DENTON. This is with reference to 18 U.S.C. 951.

Mr. RICHARD. Do you have an opinion on that, Mr. Martin?

Mr. MARTIN. We have taken a position in the past, Mr. Chairman, that, where there is actual notification and knowledge of the activities of an agent of a foreign power within the United States, within any department, and not necessarily limited to State, that for practical purposes of enforcing the act, that is notification to the Government. The intent of 951 is to notify the U.S. Government, as one of its components, that there is someone within the United States acting on behalf of a foreign government.

Now, the earlier reference to, say, members of the Canadian law enforcement or intelligence services, a friendly intelligence service or law enforcement agency who sends someone here to work jointly with our services, creates no problem. Our efforts are to get at those people who are dispatched and carry on secret and clandestine activities. And they usually give notice to no one, not written notice, oral notice, or actual notice. So that, for practical purposes of enforcing the statute we do not have any notification by hostile intelligence services who are dispatching agents. And with regard to those friendly services, we say that, if the legal attaché who is a representative of the FBI in Canada is notified, then that is sufficient notice for our purposes of the fact that a friendly government is sending one of its people to work with us on a case.

Senator DENTON. Thank you, Mr. Martin.

Thank you for your testimony and answers, Mr. Richard. I will now start the questions for the Department of State after inviting Mr. Jeffrey Smith to offer any opening statement he cares to make.

Mr. SMITH. Thank you, Mr. Chairman. I do have a very brief opening statement which I will make even briefer in summary.

Senator DENTON. Without objection, your full statement will be included in the record.

Mr. SMITH. I want to begin by assuring you and members of the subcommittee that we are concerned about the activities of hostile intelligence services on the Hill as well as elsewhere in the United States. Specifically commenting on the two bills before us this morning, the Department of State concurs with the Department of Justice's evaluation on S. 1959. We also agree with the Department of Justice in its evaluation of S. 1963, which will provide a useful clarification of our criminal laws.

We share the Department of Justice's concern that the absence of a definition of "agent of a foreign government" may cause problems. We think that there ought to be a definition of that in the law.

I would like to make two specific State Department concerns known.

We do not believe that in the course of developing the definition of "agent of a foreign power" that foreign officials who are already

registered with or notified to the Department of State under existing regulations should be required to register.

We also believe that certain legitimate activities in this country on behalf of foreign governments should be exempt from the statute. I have in mind American attorneys who represent foreign governments in American courts and individuals involved in legitimate business activities on behalf of a foreign client.

Senator DENTON. Thank you, Mr. Smith.

S. 1959 would require that notification be given to the Department of Justice prior to certain activity on the Hill. Is such information presently available or being compiled anywhere else that the Department is aware of? In other words, would the information required under S. 1959 be duplicative of such information already being accumulated?

Mr. SMITH. No.

Senator DENTON. Would the information required by S.1959 be of benefit to the Department of State?

Mr. SMITH. In my judgment it would not be terribly beneficial because the chief concern of such information would be of a counterintelligence nature, which is of greater concern to other agencies.

Senator DENTON. I have asked this question of the Department of Justice. I will ask it of you.

As I understand the Department's position in this matter since you have concurred with Justice, it anticipates that this bill would antagonize our Communist friends and result in actions which could be fairly termed retaliatory. Is that a fair statement?

Mr. SMITH. I do not wish to overemphasize, Mr. Chairman, our concern here. We have many concerns with S. 1959, as Mr. Richard said. One of them, however, is the potential for the Soviets to take responsive measures. It has been our experience that the Soviets do take retaliatory steps to whatever we do here. This administration, as you know, has an increasing concern for the notion of reciprocity between us and the Soviets with respect to a number of measures including the free movement and conduct of diplomats.

Senator DENTON. Well, we would seem to be at a drastic disadvantage in terms of intelligence gathering and transfer of trade technology, which was previously mentioned.

I really cannot get personally enthusiastic about concerning myself with retaliatory measures if we take steps to improve that imbalance, to improve the relative situation. I think a lot of Americans would agree with me, but I do understand that there might be some thing that they would do to make it more difficult. But that seems to be their modus operandi. I would not want to see much emphasis placed on that objection.

Would you state whatever you think about the comparison of restrictions now placed on our diplomats, journalists, tourists, et cetera, in Communist countries with those placed on their counterparts while in the United States?

Mr. SMITH. There is no question, Mr. Chairman, that our diplomats and other Western diplomats in Moscow and in the rest of Eastern Europe are under severe restrictions. Moreover, members of the Western press are also under severe restrictions, which do not hamper Soviet and other Eastern European officials in this country. We do, however, as you know, have some limitations on

the travel of Soviet diplomats in Washington and in their missions in New York. But in terms of access to Government and access to persons in Washington and New York, surely the Soviets enjoy far greater freedom of access and movement than do our diplomats and other officials in Eastern Europe and the Soviet Union.

Senator DENTON. Would you outline in what ways you see that the Communists might impose greater restrictions were we to enact something like S. 1959?

Mr. SMITH. It is hard to predict, of course, Mr. Chairman, what they might do, but it has been my experience that they can be very creative in devising ways to make life even more difficult for us.

Senator DENTON. Do you see any way in which the information requirements of S. 1959 duplicate the existing requirement to the Alien Registration Act?

Mr. SMITH. I am not fully versed with the Alien Registration Act. My understanding is that it applies to aliens who will be permanently resident or at least resident in the United States for some time. I do not know what the overlap would be. I think my Justice Department colleagues would be better equipped to address that than would I.

Senator DENTON. In what ways, if any, will the enactment of S. 1959 adversely impact on any treaty obligations of the United States or customary international law?

Mr. SMITH. There are a number of international instruments and agreements to which the United States is a party which other governments may argue are violated by S. 1959. The International Declaration on Human Rights, the constitution of UNESCO, and even the Vienna convention on diplomatic relations, which talks about permitting diplomats free movement, are all international obligations of the United States that need to be examined closely.

Senator DENTON. Would it be unreasonable to assume that we have more room for retaliatory action were they to start that? We are relatively open with our reception of them as opposed to their reception of us. Would not we win that ballgame, as it were?

Mr. SMITH. Mr. Chairman, this is an area in which I think it perhaps best if we discuss it not in open session. As I mentioned earlier, the matter of reciprocity between our two governments is a matter under review at the moment. I would prefer to address that not in open session.

Senator DENTON. Is there a requirement for Department of State employees to report contacts with Soviet bloc representatives to their agency?

Mr. SMITH. Yes.

Senator DENTON. Let me ask you a few questions pertaining to S. 1963. What constitutes notification sufficient to meet the requirements of 18 U.S.C. 951? I think you mentioned you were not that familiar with it—you should be familiar with it.

Mr. SMITH. As Mr. Lisker well knows, Mr. Chairman, we do not have any regulations which implement 18 U.S.C. 951. The usual situation is that, when an individual contacts the Department of State or when we learn of an individual who might have an obligation to notify the Secretary of State, we ask that they write a letter to us which describes their agency relationship with the foreign principal. That letter is maintained by the Department of State in

a public file. We also routinely suggest that they contact the Department of Justice registration unit and the Criminal Division as well.

Senator DENTON. How are those notifications indexed for future reference?

Mr. SMITH. They are indexed by country.

Senator DENTON. When a request is made to determine if an individual has notified, which files are searched?

Mr. SMITH. The files are centrally maintained in the office of legal adviser for current records and in the Department's central files for retired records. However, when we get a request as to whether or not somebody has notified the Department of State, we have a procedure for checking with a number of various bureaus and offices within the Department of State to make sure that no notification, or other communication which could be construed as satisfying the requirement of the statute, has been sent to some other part of the Department.

Senator DENTON. Is this search dispositive of the question? Or could the notification have been made by a less formal method such as passing on the information to an Assistant Secretary of State at a cocktail party?

Mr. SMITH. That has always been a concern, Mr. Chairman, in the absence of implementing regulations, that, should a prosecution be brought against someone, that individual could claim that he had made such an assertion; and that might be a defense.

Senator DENTON. Why haven't implementing regulations ever been promulgated?

Mr. SMITH. Well, in the wake of an unfortunate criminal case brought in 1976 in Philadelphia in which a 951 count was dismissed by a Federal judge, we attempted to prepare regulations. Several drafts were prepared and discussed with the Department of Justice. Unfortunately, those came to no conclusion. A decision was made at that point that the responsibility for section 951 would shift to the Attorney General. It seemed not productive to pursue the development of regulations when the Department of Justice would then take over the responsibility for administration of the statute.

Senator DENTON. I guess that is the general tenor of what we are trying to do here: The responsibility reposed with the Department of State. I do not understand how you could have shifted it to the Attorney General with the law written as it was.

Mr. SMITH. I am not sure I understand your question, Mr. Chairman.

Senator DENTON. You said something about shifting the responsibility to the Department of Justice, to the Attorney General.

Mr. SMITH. Yes, a decision was made, and I do not recall exactly when, but several years ago, as part of the revised Federal Criminal Code, the responsibility for notification would shift to the Attorney General. At that point we expected the Federal Criminal Code to be enacted, and therefore work ceased on implementing the regulations.

Senator DENTON. But the responsibility was not transferred?

Mr. SMITH. That is correct, yes.

Senator DENTON. Does a caterer who is in the permanent employ of a foreign embassy in the United States have an obligation to notify?

Mr. SMITH. In the absence of the clear agency relationship, he probably does not. But we have received notifications from individuals and companies that have had similar relationships with foreign governments who, out of an abundance of caution, have submitted notifications.

Senator DENTON. For the record, how is the notification act interpreted by those at the Department of State who give guidance to those seeking to fulfill the requirements of the act as to who should register and who should not?

Mr. SMITH. We inform people that there are no implementing regulations. We suggest that, if they think they have an agency relationship within the meaning of U.S. law, that they ought to send us a letter.

Senator DENTON. In your personal view, what categories of occupations or professions should file notifications?

Mr. SMITH. We think, Mr. Chairman, that one of the useful purposes that will be served by trying to define "agent of a foreign power" in law is to get a clear understanding of what purpose is to be served by this registration statute. Despite the perhaps unfortunate enforcement record of 951 within the Department of State, we think it would be useful to transfer responsibility to the Department of Justice and are prepared to work with committee staff and other members of the administration in developing this definition.

As I said in my opening statement, we think there are certain categories of individuals who need not, in our view, register with the Attorney General. These would include foreign officials who are here on business on behalf of foreign governments, people engaged in legitimate representation of foreign governments in commercial activities.

Senator DENTON. Mr. Lisker would like to pursue a technicality with you.

Mr. LISKER. With respect to your last statement about certain categories of foreign officials, I think you may recall during a previous administration the case of Mr. Schmuel Katz, a representative of Menachem Begin, who was at the time trying to form a government and had designated Mr. Katz a lobbyist. Mr. Katz seemed to have the task of convincing people that Begin was not really a terrorist, as some people had tried to characterize him. Do you think that Schmuel Katz would have been one of those who should not have notified, assuming the Department of Justice had the statute? Apart from the Foreign Agents Act now, do you think that because he was in a sense a representative of Mr. Begin that he should have no obligation to register or notify?

Mr. SMITH. In my view, no useful purpose would have been served by requiring Mr. Katz to have registered. He clearly acknowledged that he was a representative of Mr. Begin.

If I may refresh our memories, this followed shortly after Mr. Begin's party obtained a majority in the Knesset. Mr. Begin was in the process of forming a government. He sent Mr. Katz to Washington to meet with a number of people including Mr. Brzezinski, Secretary Vance, and others at that level. There was no doubt in

anybody's mind as to whom Mr. Katz was. He clearly was a representative of a government in the process of being formed in Israel. He readily acknowledged that. He appeared on public media saying: I am here as Menachem Begin's representative. He met with senior officials of this government as such.

It is not clear to me what public purpose would have been served by requiring him to register.

Mr. LISKER. Well, if you use that example and that argument, you could say the same thing about Tongsun Park and a number of other people who became well known as Korean emissaries on the Hill and other places and who failed to comply with the requirements of the Foreign Agents Registration Act. I mean, the fact that some people, or even a significant number of people, happen to know who an individual is and about his association, does not mean that the law should not be complied with, does it? Where is the notice to the public at large and to the press?

Mr. SMITH. It seems to me there is a substantial difference between what Mr. Park was doing and what Mr. Katz was doing. One of the things that we will have to discuss is what purpose is to be served by the registration statute. What is it that we are trying to accomplish? Is it to put people on notice that an individual is acting on behalf of a foreign government? Or is it to require that individual to, having once said that, then announce what it is that he is doing on behalf of his foreign government?

A number of these questions, it seems to me, need to be weighed in considering this bill (S. 1963).

Mr. LISKER. Is Mr. Katz an Israeli or a South African?

Mr. SMITH. To my knowledge, he was an Israeli.

Mr. LISKER. You may be correct; however, my recollection is that he had South African travel documents and passport.

The only reason that I raise this is because I remember rather vividly the efforts of the Department of Justice to obtain Mr. Katz' registration under the Foreign Agents Registration Act, not under 951. I think that this is part of the problem, I suppose, to have some common understanding of just what it is that we are seeking to achieve by either notification or by registration and disclosure under the second statute.

Mr. SMITH. I agree.

Senator DENTON. Former White House counsel Lloyd M. Cutler in a lecture at Emory University pointed out that by his calculation in the District of Columbia there was one lawyer for every 30 people. In fact, in the work force nationwide one in every 200 people is a lawyer, according to his talk. Recognizing that among the lawyers in the District of Columbia a vast number work for the Federal and District Governments, I believe nevertheless that a large number are employed by private firms.

During the last 2 years, how many American lawyers have notified the Department of State that they represent foreign governments?

Mr. SMITH. I do not have the exact figure, Mr. Chairman. We receive about 20 notices per year under section 951, the majority of which come from either Washington or New York law firms.

Senator DENTON. Do you think that covers the field?

Mr. SMITH. Of course not.

Senator DENTON. How many other Americans have notified pursuant to the provisions of 18 U.S.C. 951?

Mr. SMITH. As I indicated in my previous answer, Mr. Chairman, I do not have the breakdown between law firms and private individuals. We could certainly provide that information for the record if the committee wants it.

Senator DENTON. What efforts does the Department make to insure compliance with the statute?

Mr. SMITH. In all candor, Mr. Chairman, we inform our own employees of the requirement of the statute. When an individual calls up and contacts the Department and asks what the obligations are, we inform them.

Senator DENTON. I want to thank you all for your help here this morning. You may be receiving questions from other Senators. We will keep the record open for any further testimony you wish to submit and ask you to have replies to questions we might address to you in written form within 10 days.

[The prepared statements of Messrs. Richard and Smith follow:]

STATEMENT

OF

MARK RICHARD
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

CONCERNING

S. 1959 - REGISTRATION OF COMMUNIST NATIONALS

Good Morning. My name is Mark Richard, Deputy Assistant Attorney General for the Criminal Division, United States Department of Justice. It is my pleasure this morning to appear before the Subcommittee on Security and Terrorism to testify on two bills, S. 1959 and S. 1963. After I have read my prepared statement I will be happy to entertain any questions from the panel regarding these bills.

The Department of Justice cannot support passage of the Bills. While we appreciate congressional concerns regarding the handling of sensitive information, S. 1959 is too vague and overbroad to serve as a viable solution to the perceived problem. On the other hand, while in our view Congress should define the crucial term "agent of a foreign government," in S. 1963, we agree in principle with increasing the penalty for failure to notify, and transferring responsibility for receiving the notifications from the Secretary of State to the Attorney General. Accordingly, we believe that S. 1963 represents an acceptable starting point for reexamination of these activities of agents of foreign governments.

S. 1959 as drafted would prohibit any national of a Communist country from attending any session of the Congress, or any committee, subcommittee or conference committee hearing, or from making any other contact with a member of Congress

or employee of such member unless the national first files with the Attorney General under oath a statement of purpose (elsewhere called a registration statement). Persons who violate the Act are to be ordered deported by the Attorney General, without benefit of any administrative hearing. The deportation orders are not subject to judicial review, and persons deported are to be permanently excluded from the country. However, the Attorney General is granted the power to waive the application of the Act to any person if he determines such action not in the best interests of the United States.

S. 1959 is in our judgment vague, overbroad, too summary, and provides little or no connection between its stated purpose and the disclosures which would result. Because of its overbreadth, the Department does not think it is saved by the extraordinary delegation of discretion to the Attorney General to substitute his judgement for that of the Congress regarding application of the Bill, an approach we believe undesirable. Finally, the Bill fails to take into account the inherent authority of Congress to take administrative steps short of legislation to alleviate the perceived problem.

S. 1959 is vague and overbroad with respect to persons covered. For example, since the term "national" of a Communist country is not defined, the Bill would apply to both communist and anti-communists, such as Alexander Solzhenitsyn. The Bill would apply to intelligence operatives, as well as to political refugees, tourists and even children. The Department is particularly concerned that the Bill would also apply to diplomats, foreign government officials, and print and broadcast media representatives. Specifically, the Department is concerned that imposition of these restrictions would lead to restrictions on our own diplomats and journalists, and would contravene multilateral treaty obligations of the United States and customary international law.

S. 1959 is also vague and overbroad with respect to places and communications covered. Since the Bill is not limited to the Congress it presumably applies to conversations occurring anywhere, including private homes, embassies, and even overseas. S. 1959 does not discriminate between public information like press releases or public reports and properly classified data, nor does it make any distinctions based on the person initiating the contact. The Bill would therefore subject to deportation any covered national who accepted telephone calls from members or staff aides.

S. 1959 would subject to permanent and unreviewable deportation orders a new class of people, who uniquely, would be deprived of any administrative hearing. The constitutionality of such a provision is open to serious question. See The Japanese Immigrant Case, 189 U.S. 86 (1902), and Sung v. McGrath, 339 U.S. 33 (1950). The Department cannot support the summary, mandatory, nature of this provision, its permanency or its unreviewability. Nor can the Department support a provision which strips the Attorney General of discretion to dispose of these matters in any manner other than by deportation.

Passage of S. 1959 would result in a mass of registrations, a host of requests for waivers, and considerable litigation. As a consequence of its overbreadth, and its requirement for a separate registration for each communication or attendance, compliance, and thus enforcement and administration are virtually impossible. The Bill would also duplicate in part the present alien registration system (see 8 U.S.C. 1301 et seq.) for many covered people, and perhaps most importantly, it would generate little or no useful information. Notably, there are no penalties for incomplete, false or fraudulent statements under the Bill although we assume that the general false statement statute, 18 U.S.C. 1001 would be applicable. Accordingly, in view of the substantial difficulties inherent in the Bill's approach, it is suggested that the Committee

might desire to consider a more narrowly focused mechanism utilizing the ample authority of the Congress to regulate activities affecting foreign relations. The Department stands ready to work with your subcommittee to attempt to agree on language which would address the problem of foreign agents improperly obtaining sensitive documents from the Congress.

With respect to S. 1963 and as I noted previously, the Department supports transferring of responsibility for receiving the notifications from the Secretary of State to the Attorney General, a proposal which also appears in section 1126 of S. 1630 as reported by the Judiciary Committee. The Department also supports in principle increasing the penalty for failure to notify from $5,000 to $50,000, if adjustments to related penalty provisions are also made. Specifically, violations of this notification provision are not intrinsically more serious than certain espionage or even Foreign Agents Registration Act violations. Consequently, the Department suggests that the committee consider related statutes in the foreign area to ensure that the relationship of present crimes and penalties is not inadvertently altered.

Finally, the Department does believe that the Congress should define the term "agent of a foreign government" in S. 1963 narrowly to avoid the problems presented in the recent IRA gun smuggling case in Philadelphia, in which the judge indicated that in the absence of clarifying regulations Section 951 was too vague to adequately warn defendants that their conduct was proscribed. The Committee may also wish to take appropriate consideration of State Department concerns. We look forward to working with you and the Department in this effort. Thank you.

PREPARED STATEMENT OF JEFFREY H. SMITH

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE ON SECURITY AND TERRORISM, I APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO COMMENT ON THE IMPORTANT MEASURES YOU ARE CONSIDERING.

THE DEPARTMENT OF STATE CONCURS IN THE DEPARTMENT OF JUSTICE'S EVALUATION ON S.1959, THE PROPOSED BILL WHICH REQUIRES ALL NATIONALS OF COMMUNIST COUNTRIES TO REGISTER WITH THE ATTORNEY GENERAL BEFORE ENGAGING IN CERTAIN ACTIVITIES INVOLVING MEMBERS OF CONGRESS.

WE ALSO AGREE WITH THE DEPARTMENT OF JUSTICE THAT S.1963, WHICH ATTEMPTS TO CLARIFY THE NOTIFICATION REQUIREMENTS FOR FOREIGN AGENTS UNDER 18 UNITED STATES CODE SECTION 951, WITH CERTAIN MODIFICATIONS, WILL PROVIDE A USEFUL CLARIFICATION OF OUR NATION'S CRIMINAL LAWS. WE SHARE THE DEPARTMENT OF JUSTICE'S CONCERN WITH THE ABSENCE OF A DEFINITION OF "AGENT OF A FOREIGN GOVERNMENT" IN S.1963 AND WOULD BE HAPPY TO WORK WITH THE SUBCOMMITTEE, ITS STAFF, AND THE DEPARTMENT OF JUSTICE TO DEVELOP A SATISFACTORY DEFINITION. WE ARE PARTICULARLY CONCERNED, FOR EXAMPLE, THAT S.1963 NOT BE MADE TO APPLY TO FOREIGN OFFICIALS REGISTERED WITH, OR NOTIFIED TO, THE DEPARTMENT OF STATE UNDER 22 C.F.R. PART TWO OR PART FOUR, OR TO FOREIGN GOVERNMENT OFFICIALS WHO COME TO THE UNITED STATES ON OFFICIAL BUSINESS AND ARE THEREFORE KNOWN TO THE UNITED STATES GOVERNMENT. WE ALSO BELIEVE THAT AMERICAN LAWYERS WHO REPRESENT FOREIGN GOVERNMENTS IN AMERICAN COURTS AND INDIVIDUALS INVOLVED IN ROUTINE COMMERCIAL ACTIVITIES SHOULD BE EXEMPT FROM THE STATUTE.

THANK YOU AGAIN FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF THE DEPARTMENT OF STATE.

Senator DENTON. Thank you very much, gentlemen. This hearing is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

PROPOSED LEGISLATION

97TH CONGRESS
1ST SESSION

S. 1959

To require all nationals of Communist countries to register with the Attorney General before engaging in certain activities involving Members of Congress and congressional employees, in order to protect the internal security of the United States and impede espionage.

IN THE SENATE OF THE UNITED STATES

DECEMBER 15 (legislative day, NOVEMBER 30), 1981

Mr. DENTON (for himself and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To require all nationals of Communist countries to register with the Attorney General before engaging in certain activities involving Members of Congress and congressional employees, in order to protect the internal security of the United States and impede espionage.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) any person who is a national of a Communist country may not—

(1) attend any session of the Congress, any meeting of any committee or subcommittee of the Congress,

including a conference committee, or any other meeting or function sponsored by a Member of Congress or by a congressional employee in his or her official capacity; or

(2) make any other contact with any Member of Congress or any employee of a Member or committee of Congress while carrying out his or her official duties;

unless that person first files with the Attorney General, under oath on a form prescribed by the Attorney General, a statement of purpose in attending such a session, meeting, or function, or of making such contact.

(b) The Attorney General shall retain in permanent form one copy of all registration statements and the same shall be public records and open to public examination and inspection at such reasonable hours, under such regulations, as the Attorney General may prescribe, and copies of the same shall be furnished to every applicant at such reasonable fee as the Attorney General may prescribe.

(c)(1) The Attorney General shall promptly order deported any person who violates the provisions of subsection (a).

(2) The provisions of section 242 of the Immigration and Nationality Act shall not apply to deportations pursuant to

paragraph (1). An order of deportation pursuant to paragraph (1) shall not be subject to judicial review.

(3) Any person deported pursuant to paragraph (1) shall thereafter be ineligible to receive a visa and shall be excluded from admission into the United States.

(d) The Attorney General, having due regard for national security and the national interest, may waive the application of this Act with respect to any person if the Attorney General determines that the application of this Act to that person is not in the best interest of the United States.

(e) The Attorney General may issue regulations as are necessary to carry out this Act.

(f) For purposes of this Act, the term "Communist country" means any country within the meaning of section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)).

97TH CONGRESS
1ST SESSION

S. 1963

To improve the internal security of the United States by clarifying the notification requirements for foreign agents under section 951 of title 18, United States Code, and to increase the penalties for failure to notify.

IN THE SENATE OF THE UNITED STATES

DECEMBER 15 (legislative day, NOVEMBER 30), 1981

Mr. DENTON (for himself, Mr. EAST, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To improve the internal security of the United States by clarifying the notification requirements for foreign agents under section 951 of title 18, United States Code, and to increase the penalties for failure to notify.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 951 of title 18, United States Code, is amended by--

(1) striking out "Secretary of State" and inserting in lieu thereof "Attorney General if required in subsection (b)";

(2) striking out "$5,000" and inserting in lieu thereof "$50,000"; and

(3) inserting "(a)" before "Whoever" and adding at the end of such subsection the following new subsections:

"(b) The Attorney General shall promulgate rules and regulations establishing requirements for notification. Such rules and regulations shall set forth a definition of 'agent of a foreign government'.

"(c) The Attorney General shall upon receipt, promptly transmit one copy of every notification statement filed hereunder to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General to do so shall not be a bar to prosecution under this Act.".

ADDITIONAL SUBMISSIONS

STATEMENT OF THE HALE FOUNDATION

ON S. 1959

Mr. Chairman and members of the Subcommittee: The Hale Foundation appreciates this opportunity to present its views on the issue of registration of Communist nationals who deal with members of Congress.

The Hale Foundation is a non-profit, tax-exempt organization dedicated to enhancing the capability of U.S. intelligence to serve the fundamental objectives of the Constitution—"insure domestic tranquility, provide for the common defense, promote the general welfare."

It is a known fact that Capitol Hill has proven to be a gold mine of information for agents of the KGB and GRU, as well as agents of Soviet bloc intelligence services such as DGI (Cuba) and MfS (East Germany). Such agents collect documents, attend hearings, cultivate staff workers, and talk with members of Congress in order to obtain technical, military, foreign policy, and political information. James E. Nolan, Jr., the Deputy Assistant Director, Intelligence Division of the FBI, stated in testimony before this Subcommittee on May 12, 1982, "I would say that there is probably almost on a daily basis in which we are discussing or interviewing various people who had such contacts on the Hill," but also stated he was certain that not every contact is reported to the FBI.

All too often, their true aims or identities are unrecognized by the individuals they deal with. As Theodore Gardner, Special-Agent-in-Charge of the FBI's Washington field office stated, Congressional staff members "become used to the presence of these people. It lowers your psychological barriers... People tend to be very honest and open. They do not appreciate or want to believe the ends the Soviets want to achieve." He explained that Soviet and bloc agents are continually trying to evaluate political strategy, discover what top policymakers really think, collect technical information, gain entree to well-placed officials, and ultimately, to recruit people to turn over classified information and documents, and added, "We see the danger because we work with it everyday." ("KGB Cultivates Capitol Hill Ties", Howie Kurtz, The Buffalo News, April 4, 1982, at F-1 cols. 1-2 and F-4 cols. 1-2. The Kurtz article appeared in the Washington Post March 28, 1982.)

A few examples will illustrate the problem.

On February 4, 1982, the Director of the FBI testified in front of this

Subcommittee about the growing number of spies in the United States. During this testimony, he commented, "It might be of interest to the Chairman to know that this morning there was an official of the Russian Embassy present at these hearings."

Last September, a Soviet Embassy Official visited Congressman David Emery's office for information on his alternative plan for deploying the MX missile. The official was Yuri Petrovich Leonov, who was later discovered to be a member of the GRU. The Congressman's aide, John Robb, stated, "I couldn't believe he was so brazen about it. Their activities are vastly more pervasive than the average person would suspect. They offer you hockey tickets, they want to establish a relationship with you. They're very polished, very Westernized."

Another Congressman, Don Ritter, was visited last year by Sergei Chetverikov, whom intelligence files indentify as a KGB agent. The Congressman invited two other persons along and met in a restaurant, instead. "I didn't want to be alone with him in my office," he said. (In fact, Congressman Ritter is so concerned about KGB involvement on the Hill that he has sponsored an identical bill to S. 1959 in the House, H.R. 5105.)

An unpublicized luncheon was held on Capitol Hill January 19, 1982 for specialists on Korea and a member of the State Department. Members of the group were astonished to discover the name of Georgi A. Zagvosdin, a KGB agent, on the sign-up sheet. Committees on defense and foreign policy are particularly plagued with this problem. The staff director of a House foreign affairs subcommittee, Michael Van Dusen, stated, "Two or three of them seem to have nothing else to do but follow us around and gobble up whatever they can," and added, "It makes me nervous--they're popping in the door while we're in and out and there's (confidential materials) sitting on your desk."

Another staff member of a foreign policy subcommittee was approached a half-dozen times over an 18 month period by Vladimir Vikulov, another KGB agent. "He would show up haphazardly, never calling to make an appointment like other embassies do," the staffer stated. "He always wanted documents from me, reports and hearings on the U.S. foreign policy. He was very interested in the deployment of nuclear intermediate-range missiles in Europe."

Shortly thereafter, Vikulov's approaches took a slightly different turn. "It was really bizarre - he would ask where are you from, what kind of a stereo system do you have, where do you go on vacation, mostly personal

stuff." the staffer reported. (all above examples from "KGB Cultivates Capitol Hill Ties," The Buffalo News, April 4, 1982)

"When they start asking questions about your personal life, that is the beginning of an assessment," SAC Gardner (FBI) stated, adding that the Soviets keep a record of every person they approach in Congress and make careful assessments of how each one can be useful. Another approach (utilized in 1968 against James Kappus, Congressman Alvin O'Konski's staffer by KGB agent Boris Sedov) takes advantage of individuals who are interested in or curious about the Soviet Union by putting them in contact with a KGB agent in an innocuous setting. The agent and his target begin by exchanging ideas, but then the agent requests increasingly more important information. In the case cited, the aide was first asked to write a short article about presidential candidates (used by Novosti, the Soviet press agency), and later about the F 16 fighter plane and MIRV missiles. Finally Sedov put pressure on the aide to give him copies of classified Armed Service Committee documents. The aide in this instance was in contact with the FBI by the time these later meetings occured; unfortunately, damage cannot always be so neatly contained. (Kappus case from Inside the FBI, Andrew Tully, McGraw Hill Company, 1980, at 83-6)

S. 1959 is an important step toward containing that damage. It provides that all nationals of Communist countries who want to visit any member or staffer of Congress, or attend any hearings, must register a sworn statement with the Attorney General regarding the purpose of such a visit (section (a)). If the person does not register, deportation will occur, and the courts will not have jurisdiction over this deportation (section (c)).

The Hale Foundation supports S. 1959 and urges its enactment. This legislation would have several effects on the Soviet and bloc presence on Capitol Hill.

First, it would reduce the ease of access which such individuals presently have, by requiring them to go through a process of registration. Second, it would put on record what individuals the Communist nationals would visit and what hearings or meetings they would attend. This would help eliminate the "surprise element" which confronted aides and committee staffers in our earlier examples. It would also impede the "low profile" cultivated by the members of Soviet and bloc intelligence agencies which is so essential to their work, by compelling visibility in the form of a registration statement. Addi-

tionally, these records would help establish a pattern of their activities. It has been mentioned, of course, that a national may give a false reason in his sworn statement to the Attorney General. It should be noted, however, if that person is found to engage in improper activities, contrary to his stated purposes, the earlier sworn statement will provide additional evidence of his duplicity.

S. 1959 is also careful to define who are considered nationals of a Communist country, by its specific reference to the Foreign Assistance Act of 1961, § 620(f) (22 U.S.C. § 2370(f)). § 2370(f) states that the phrase "Communist country" "shall include specifically, but not be limited to, the following countries: Peoples Republic of Albania, Peoples Republic of Bulgaria, Peoples Republic of China, Czechoslovak Socialist Republic, German Democratic Republic (East Germany), Estonia , Hungarian Peoples Republic, Latvia, Lithuania, North Korean Peoples Republic, (North) Vietnam, Outer Mongolia-Mongolian Peoples Republic, Polish Peoples Republic, Rumanian Peoples Republic, Tibet, Federal Peoples Republic of Yugoslavia, Cuba, and Union of Soviet Socialist Republics (including its captive constituent republics)." The specificity of this provision insures that an objection of "vagueness" cannot be brought against this section. It also serves to adequately put on notice persons who would be affected by this law. For this reason, there can be no doubt as to which individuals are under the jurisdiction of this legislation. There can also be no doubt as to the type of conduct governed by this legislation, as section (a) clearly states what a Communist national cannot do and whom a Communist national cannot see unless he registers. The conduct proscribed is in specific terms; therefore it is not open to a "vagueness" charge. The proscription is narrowly drawn; it does not prohibit access or even lessen it, but provides the miniscule regulation of it by requiring a registration statement. Because it utilizes the least restrictive means, it cannot be characterized as "overbroad". As the Supreme Court stated, "Where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." (Broadrick v. Oklahoma, 413 U.S. 601, 615 (1973))

It has also been mentioned that a Communist national, especially one engaged in espionage, would be likely not to register. Those deciding not to register, however, run the risk of discovery, and deportation. If a suffi-

cient level of awareness were raised on Capitol Hill so that members and staffers were alerted to both the methods of approach by Communist nationals and the provisions of this act, the risk of discovery would significantly increase. The risk of deportation would then become an effective compliance enforcement mechanism as intended by this bill.

Nevertheless, deportation will only act as a deterrent if it is certain to occur, and if it occurs swiftly. S. 1959 exempts orders to deport persons violating section (a) of this bill from § 242 of the Immigration and Nationality Act, and also from judicial review. § 242 of the Immigration and Nationality Act (8U.S.C. § 1252) requires hearings by a special inquiry officer to determine the deportability of any alien by formal proceedings including representation by counsel, presentation of evidence, and cross-examination. If an order of deportation is entered, the Attorney General has six months to effect the alien's departure; during the six months, the alien may be released depending on the Attorney General's discretion. The alien can instead choose to appeal the order of deportation, and may be released on such grounds as age, health, period of detention, or eligibility for discretionary relief under the immigration laws as determined by the court.

Some constitutional questions have been raised regarding the elimination of the §242 hearing for deportation of individuals violating (a) of S. 1959. It must be remembered that the Supreme Court has stated that it will subject federal laws "burdening" aliens to a more lenient standard of review because of unique federal interest in this area. "Congress, as an aspect of its broad power over immigration and naturalization, enjoys rights to distinguish among aliens." (Nyquist v. Mauclet 97 S.Ct. 2120, 2124-5, n.8 (1977)). This means that although alienage is a "suspect classification", subject to the "strict scrutiny" test, the law will be found constitutional if there is a compelling governmental interest. Under Nyquist, federal laws using a criterion of alienage need not be as strictly scrutinized as those utilizing race or national origin as classifications.

It may be argued that S. 1959 uses "national origin" as a classification. This argument may be answered in two ways. First, when the Supreme Court speaks of "national origin" as a suspect classification, it is ordinarily speaking of the national origin of naturalized citizens or the ancestors of citizens by birth. Second, even if one considers the classification of this bill as falling into the "national origin" rather than

"alienage" classification as set up by the Supreme Court, the final criterion is whether there is an overriding or compelling governmental interest. To determine how the Supreme Court views this particular governmental interest, one need only examine the Court's statement in Haig v. Agee: "it is obvious and unarguable that no governmental interest is more compelling than the security of the Nation." (No. 80-83, slip op. at 26, June 29, 1981)

The Hale Foundation does not view S. 1959 as the ultimate panacea for the problem of Soviet and bloc espionage on Capitol Hill. Rather, it is hoped that this bill will be a starting point to curb Soviet and bloc activities, as well as to create a greater awareness among members and staffers of the very real dangers posed by these activities. For these reasons, the Foundation urges the Subcommittee to report S. 1959 favorably and to consider other measures to supplement this bill in the future.

ADDITIONAL QUESTIONS OF SENATOR DENTON

AND RESPONSES FROM DEPARTMENT OF JUSTICE

1. Would the advance notice as provided by S.1959 allow the FBI to better allocate and use its men and resources and to better assess the scope of overt activity by Communist bloc intelligence services?

Would such disclosure give the FBI information about some hostile intelligence service contact which might not otherwise be available?

The introduction of S.1959 has highlighted the potential problems posed to our open political institutions by hostile intelligence agents. While notice regarding the activities of hostile agents is always of value to the FBI, most of the information sought by the Bill could be obtained if properly briefed staff reported hostile contacts to a security officer of the Congress. The Department accordingly recommends as an alternative to the Bill an awareness program which builds on the intelligence and discretion of the Members and professional staff by informing them of the modus operandi of hostile intelligence agents, e.g., how to recognize assessment and recruitment approaches by hostiles as such.

The Department deems it unlikely that the Bill would produce more useful information than the administrative measures suggested. The latter approach also has the advantage of being preventative in nature, and thus acts as a more substantial deterrent than registration. Finally it deprives hostiles of an indication of the extent of our knowledge of their activities.

2. If notification under S.1959 is required, could this compel the Soviets to hire Americans as intermediaries to do the work for them?

Would this compel notification or registration under 18 U.S.C. 951 (Notification Act) or 22 U.S.C. 611 et seq. (Foreign Agents Registration Act)? Would such registration be more advantageous to the U.S. Government, in that it could compel complete disclosure and have access to the registrant's books and records?

It is difficult to speculate to what extent passage of the Bill would compel an alteration of the activities of hostile intelligence agents, but increased use of clandestine agents is a possibility. Registration of the clandestine agents under 18 U.S.C. 951, which is not likely, would not increase either the amount of information regarding these activities disclosed or the access of the Government to documents in that regard. Registration under FARA would not be required.

3. How many formal and informal briefings or contacts with communists bloc representatives have been given by the FBI

to how many of the 18,500 Congressional Members and employees in the last 2 years?

The FBI does not maintain statistics on the number of briefings provided. FBI Headquarters personnel have conducted numerous briefings of Members and staff both individually and in groups over the last two years and Special Agents of the Washington Field Office have also conducted numerous briefings.

4. How many such reports (from Members of Congress and their staffs concerning contacts initiated by communist bloc representatives) does the FBI get on a daily basis?

While a number of Members and staff make a regular practice of reporting their contacts with communist bloc diplomatic personnel, this is not the general practice.

5. You have stated that the informational requirements of S.1959 will duplicate the existing requirement of the Alien Registration Act (8 U.S.C. 1301 et seq.) Please describe how this will occur.

How does the Alien Registration Act address contacts by Soviet bloc representatives with Capitol Hill personnel?

Are the registration provisions of the Alien Registration Act still in effect? What type of information is an alien required to provide? When and to whom is the information provided?

The Alien Registration Act (the Act) generally requires permanent resident aliens to disclose certain information, and to update that information periodically. The information required by 8 U.S.C. 1304 includes, inter alia, the activities in which the alien has been and intends to be engaged, the reference intended in our testimony. The Act is not targeted at bloc representatives or primarily concerned with contacts with Hill personnel.

P.L. 97-116 recently amended the Act to eliminate the annual registration requirement for permanent resident aliens and registration for aliens in lawful temporary residence. The updated provisions focus on timely notification to the Attorney General of both groups' current addresses, rather than on activities, which are disclosed only once. Notifications are necessary within ten days of moving and every three months, respectively.

6. In what ways, if any, will the enactment of S.1959 adversely impact on any treaty obligation of the United States or customary international law?

The United States has made a number of broad commitments, including the Universal Declaration of Human Rights (Article 19), the Helsinki Accords (Section 2 of

Basket III), the Vienna Convention on Diplomatic Relations (Articles 3-1 and 27) and the U.N.E.S.C.O. Constitution (Preamble, paragraph 6), to the principle of free exchange of information, ideas and knowledge, particularly by diplomats and media representatives, those involved daily in the process. The Administration is also involved in discouraging government interference with press freedom and other forms of communication, most notably those proposed by U.N.E.S.C.O. in its so called "New World Information Order." S.1959, in impeding the free flow of information, most of it public, and ignoring the status of diplomats, consuls, and media representatives runs counter to these formulations of international law, and draws into question our commitment to these stated principles.

7. DOJ has acknowledged that a response is needed to the problem which S.1959 seeks to address.

The purpose of S.1959 is to identify nationals of communist bloc countries who have contacts with Members and their staffs in order to assist in our government (primarily the FBI) in being informed of and in monitoring their activities. Please describe the ways in which DOJ recommends that this be accomplished, including administrative measures.

The DOJ has indicated in its testimony an appreciation for congressional concerns regarding the handling of sensitive information, and the Bureau has articulated the potential problems of matching seasoned hostile intelligence agents against personnel unskilled in their methods and purposes. At the same time the Department is concerned that the reach and scope of the Bill may cause serious problems in administration and enforcement. For this reason the Department suggests that the Congress take administrative steps short of legislation to address this problem.

The Department suggests a two part approach. First, briefings by the Bureau on the modus operandi and objectives of hostile intelligence services, supported and promoted by appropriate committees of the Congress. Second, establishment of a reporting mechanism so that Members and staffers who are approached can advise a security officer of the Congress. In the opinion of the Department this approach, which relies on, and seeks to enhance, the discretion and judgement of Members and staffers, would accomplish the purpose of the Bill.

8. Assuming that some "anti-communist" nationals would be included within the purview of S.1959, would not the benefits of such legislation outweigh the minimal burden placed on them?

How many such anti-communist nationals do you estimate it would effect?

In light of the larger good to be served by the legislation, do you anticipate that they would object to the notification requirements?

One of the primary objections of the Department to S.1959 is that it seems overbroad with respect to persons covered. Coupled with the unlimited nature of the communications covered, S.1959 would compel many registrations, solely on the basis of national origin, for conversations that were completely innocent by anyone's standards. National origin is a suspect classification in our judicial system, and a presumption of guilt foreign to our sense of fair play. The Department feels the provision is demeaning and condescending, particularly to dissidents, and that it would not be outweighed by other benefits, even if relatively few dissidents or refugees registered without objection.

9. Some have suggested that diplomats, foreign government officials and print and broadcast media personnel be exempted from S.1959's coverage. However, aren't these the positions that are most usually used by the communist bloc countries as cover for their intelligence agents?

Even extensive communist bloc use of diplomatic, media or other "covers" for their intelligence operatives does not in our opinion destroy the utility or desirability of exempting such categories of personnel from the provisions of S.1959 for several reasons. First, diplomatic privileges and immunities (P&I) benefit the United States in foreign countries. Second, even diplomats with P&I can be disciplined through the <u>personna non grata</u> mechanism if the infractions are deemed serious enough, and this is more efficient then the statutory proposal. Third, the Administration generally opposes government restrictions on print and broadcast media representatives as explained in response to question 6. Finally, under the principle of reciprocity new restrictions simply invite retaliation, and the President favors expanding, not contracting, the "contest of ideas" with the Soviets.

10. What intermediate sanctions, short of deportation, does the Department recommend be incorporated in S.1959?

If a Bill were passed instead of the internal administrative procedure suggested, the Department feels a structure of civil and criminal fines from $1,000 to $10,000 could accomplish the Bill's self-identification purpose. The Department feels that all fines and subsequent (discretionary) deportations should follow established procedures, as noted in our previous statement.

11. S.1959 presently has no provision covering false, fraudulent or incomplete statements made pursuant to the requirements of the statute. Is such a provision needed?

What sanctions or penalties are recommended for the violation of such a section? Same as for failure to notify?

Such a penalty provision could have the same range of penalties suggested in response to question 10. While the

general false statement statute, 18 U.S.C. 1001, may apply, it would be better to specifically include such a provision to avoid litigation on the point later.

12.(a) Are we making it too easy for the communist bloc countries and others to gather intelligence information in the U.S.?

The answer to this question depends to a significant extent upon the meaning one gives to the term intelligence information, and the extent to which one is willing to change existing procedures and institutions to meet the perceived threat. The Department has pointed out the administrative and enforcement difficulties caused by overly broad definitions of communications which would trigger the registration requirement. It may be difficult to justify such a provision in court, and it would be counter productive to pass restrictive legislation only to have it later declared unconstitutional.

The relative ease of the communists in obtaining information in our society is a natural result of a conscious decision to have a relatively open society. Branding whole classes of communications evil may poison the atmosphere of Capitol Hill, destroying the trust essential for its successful functioning. One may question whether any information is of such lasting value that it should be protected at the cost of the institution.

12(b). Do you see any benefit in complicating for the communist bloc agents the gathering of information on the Hill?

12(c) If we make (the gathering of information on the Hill) more complex, isn't there a greater chance that they will not get the volume or quality of materials now derived from Hill sources and, in fact, this may result in their compromise?

12(d). If we develop this concept and put it into practice, won't it be less cost effective for them to pursue this route?

The Attorney General feels that the benefits of complicating information gathering in this fashion are largely illusory. As the law becomes increasingly pervasive, complex and burdensome, and the hostiles increase their use of evasive measures, including clandestine agents, the Department's investigative, interpretative and prosecutive costs would also increase. Accordingly it is difficult to justify the Bill on cost considerations.

The Department suggests that strengthening the awareness of Members and staffers would be the most cost effective means of accomplishing the information protection and counter-intelligence objectives of the Bill, since we anticipate that the compromise of hostile intelligence agents will come about primarily through increased awareness of their modus operandi.

12(e). What justification is there for allowing nationals of communist bloc countries the same access to information, hearings, Members, etc., as United States citizens?

The primary justification is the threat posed to our open political process by curtailing access to unclassified public information. Our society is premised on the idea that freedom is a universal right and that truth will ultimately prevail in a free and open debate. The threat from agents hostile to our system of government therefore should be met through education rather than compromising our principles.

12(f). Are you aware of any legal requirement that would mandate the U.S. government to accommodate the communist bloc countries?

The Department has previously listed in response to question #6 the obligations that would be called into question by passage of S. 1959. Essentially this presents a choice of competing values and ideas.

13. Is there a requirement for DOJ employees to report contacts with Soviet bloc representatives to their agency?

No. However, the Department has participated in the Defensive Security Briefing program for all individuals traveling to Communist countries since January 31, 1982. As a part of that briefing employees are advised to report to the Department any out of the ordinary contacts with Soviet bloc personnel during or after their travel.

14. In Congressman Ritter's opening statement, he indicated that while TASS and Izvestia are allowed in the House press gallery, the Voice of America is not. Is this, in fact, the case? Does this situation also exist in the Senate press gallery or elsewhere?

If so, what is the justification or reason for this situation?

It is true that the newspapers TASS and Izvestia are allowed membership in the Senate and House press galleries while Voice of America is not. However, Voice of America is in fact often admitted to the galleries anyway. The galleries have a very longstanding requirement for correspondents to declare, as a condition of membership:

> "that they are not employed in any legislative or executive department or independent agency of the Government, or by any foreign government or representative thereof;" (Rule 1, Rules Governing Radio and Television Correspondent's Galleries)

It is our understanding that the State Department requested a waiver of these rules to benefit countries where the

government controls the press, since otherwise no coverage at all would be possible.

15. Would you please compare the restrictions now placed on our diplomats, journalists, tourists, etc, in communist countries with those restrictions placed on their counterparts while in the United States?

The restrictions are as different as the assumptions upon which they are based. It is important to note that while the freedom of American correspondents in Moscow does not compare favorably to that of Moscow's correspondents in Washington, the restrictions in the bloc countries generally apply to their own citizens as well as our journalists.

16. In what ways does the Department foresee that Communist countries may impose greater restrictions as a result of the enactment of S.1959?

The Department of Justice is not in a position to predict the reaction of communist countries to the imposition of restrictions on their diplomats, media representatives and citizenry. However, the Soviet bloc may utilize S.1959 as an excuse to avoid the peaceful and reciprocal competition of ideas and values proposed by the President in his June 8, 1982 address to the British Parliament, or to score propaganda points.

17. Would the information required by S. 1959 be of benefit to the DOJ?

The Department does not think that S. 1959 would produce any more beneficial information than the program of briefings and increased referrals it is proposing as an alternative.

18.(a) With reference to the term "national of a communist country" as used in the Bill as presently drafted, please list any people or categories of people that would be included in that class who the Department feels should not be. For each one, give the reasons why the Department feels they should not give notice as required by the Bill?

The Department feels that the following personnel should be excluded from the registration requirements of the Bill:

1. Refugees, permanent resident aliens and naturalized citizens.
2. Diplomats, consular officers and visiting government officials known to the State Department.
3. Print and broadcast media representatives.
4. School children.
5. Tourists.
6. Sports figures.
7. Cultural figures.
8. Aliens awaiting citizenship.

For each group suggested the benefits of increased communication outweigh the risks of an occasional hostile intelligence agent's activities.

18.(b) Would not the waiver provision cover special situations?

In view of the large classes of people who should be routinely excluded from the scope of this Bill, the problem is not one of "special situations." Instead, waivers are necessary because the Bill makes suspect otherwise completely innocent conversations or meetings simply on the basis of national origin.

It follows that the waiver provision would appear as a "private law" wherein the Attorney General substituted his discretion for that of the Congress regarding the scope of the Bill. The inevitable charges of partisanship make the provision a source of embarrassment for the Attorney General, and selfishly the most objectionable feature of the Bill, since attacks regarding the Attorney General's fairness would color our entire prosecutive mission.

19. With reference to S.1963, please list the related statutes in the foreign area whose penalty provisions should be changed for the purpose of consistency.

Within the classification Foreign Relations in the criminal code, the Department would recommend that the fines for 18 U.S.C. Sections 951, 956, 959 and 960 all be raised to $10,000, to maintain consistency and reflect the relative seriousness of these offenses. We note that this is a lower fine then proposed in S.1963, but feel it is sufficient.

ADDITIONAL QUESTIONS OF SENATOR DENTON

AND RESPONSES FROM DEPARTMENT OF STATE

QUESTION #1

You have stated that the informational requirements of S.1959 will duplicate the existing requirement of the Alien Registration Act (8 U.S.C. 1301 et. seq.). Please describe how this will occur.

How does 8 U.S.C. 1301 (Alien Registration Act) address contacts by Soviet bloc representatives with Capitol Hill personnel?

Are the registration and disclosure provisions of the Alien Registration Act still in effect? What type of information is an alien required to provide? When and to whom is the information now provided?

ANSWER

It is our understanding that a Department of Justice official testified recently before your Subcommittee as to the overlap of S.1959 and the Alien Registration Act, and that that Department is handling this question.

QUESTION #2

In what ways, if any, will the enactment of S.1959 adversely impact on any treaty obligation of the United States or customary international law?

ANSWER

S.1959, because it restricts movement, contacts, and the gathering of public information, would violate the spirit, if not the letter, of a number of international instruments. The Helsinki Declaration, which is not binding on the U.S. but acts as a policy guideline, provides that the participating states "will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development." Conference on Security and Cooperation in Europe: Final Act, Helsinki, 1975. (Sec. 1(a), VII, para. 2) Regarding human contacts, the Declaration encourages states to "make it their aim to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States, and to contribute to the solution of the humanitarian problems that arise in that connection."

The Universal Declaration of Human Rights, which is also not binding but is respected by the United States, assures that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." (Art. 19) The exercise of rights and freedoms are restricted only by "such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of

morality, public order and the general welfare in a democratic society." (Art. 29(2)).

As regards diplomatic and consular personnel who would be covered by S.1959, the U.S. is a party to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations; each provides that subject to laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the mission or consular post. (Consular Convention, Art. 34; Diplomatic Convention, Art. 26) Although S.1959 would ideally affect only those persons who actually pose a threat to "national security," the overbroad classification of persons required to register might cause the statute to fall outside this exception. Thus, without a "national security" exception, as in the Vienna Conventions, S.1959 may constitute an infringement on freedom of movement for diplomatic and consular personnel in contravention of our treaty obligations under those Conventions.

QUESTION #3

The purpose of S.1959 is to identify nationals of communist bloc countries who have contacts with members or their staffs, in order to assist our government (primarily the FBI) in being informed of and in monitoring their activities. Please describe the ways in which DOS recommends that this be accomplished, including administrative measures.

ANSWER

In our view, a more effective and less cumbersome approach to the problem would be to tighten internal security within the Capitol by making Congressmen and their staffs more aware of the acute security problem. It is our understanding that Congressmen and Hill staff members are presently being briefed by security officers on ways to recognize and report suspicious contacts with possible agents. Such a reporting arrangement, if made effective, would focus on the very people whom S.1959 seeks to cover and would avoid the unnecessary and cumbersome registration of the many innocent contacts by nationals of communist countries.

QUESTION #4

Assuming that some "anti-communist" nationals would be included within the purview of S.1959, would not the benefits of such legislation outweigh the minimal burden placed on them?

How many such anti-communist nationals do you estimate it would affect? In light of the larger good to be served by the legislation, do you anticipate that they would object to the notification requirements?

ANSWER

We believe that the overbroad scope of S.1959 would have a serious impact on a number of innocent and proper contacts. Although it is still unclear exactly what kind of judicial scrutiny attaches to statutes affecting resident aliens, it is possible that a registration requirement based on the national

origin of aliens would violate the Equal Protection Clause of the United States Constitution. In addition, the procedure would likely subject the United States to severe criticism from abroad, as well as inhibit the free exchange of ideas central to our society.

QUESTION #5

Some have suggested that diplomats, foreign government officials and print and broadcast media personnel be exempted from S.1959's coverage. However, aren't these the positions that are most usually used by the communist bloc countries as cover for their intelligence agents?

ANSWER

Because this question touches upon sensitive intelligence matters, the Department of State believes that it should be handled by the Federal Bureau of Investigation.

QUESTION #6

What intermediate sanctions, short of deportation, does the Department recommend be incorporated into S.1959?

ANSWER

Short of immediate deportation, the bill might either include the due process requirements of section 242 of the Immigration and Nationality Act or allow for an intermediate sanction such as maintaining a list of all first offenders.

QUESTION #7

Are we making it too easy for the communist bloc countries and others to gather intelligence information in the U.S.?

Do you see any benefit in complicating for the communist bloc agents the gathering of information on the Hill? If we make it more complex, isn't there a greater chance that they will not get the volume or quality of materials now derived from Hill sources and, in fact, this may result in their compromise?

If we develop this concept and put it into practice, won't it be less cost effective for them to pursue this route?

What justification is there for allowing nationals of communist bloc countries the same access to information, hearings, members, etc. as United States citizens?

Are you aware of any legal requirement that would mandate the U.S. government to accommodate the communist bloc countries?

ANSWER

Because of our constitutional traditions as a free and open democratic society, restricting the movement and communication of foreign nationals in this country is not as easily done as it is in communist bloc and authoritarian countries. S.1959

appears to be premised on the assumption that requiring communist nationals to register will curtail communist bloc intelligence gathering efforts on the Hill, an assumption which the Department does not necessarily share. Ironically, the overbroad nature of S.1959's registration requirement, which encompasses all kinds of communication, not just those contacts likely to lead to intelligence gathering, may very well burden, rather than aid, the process of pinpointing actual agents. We again refer to our suggestion of instituting a Hill personnel reporting requirement (Para. 3), a procedure which would confine attention to communist nationals whose Hill activities require close scrutiny.

It is unlikely that the possible increased cost of intelligence-gathering that might be caused by S.1959 would have any substantial effect on the continued existence of such intelligence activities. In addition, the cost to the United States Government of administering the statute may well outweigh any benefit that might possibly accrue.

The justifications for allowing communist bloc nationals the same access to information as U.S. citizens are the desire to preserve the integrity of our free society, even if it commands a certain price in terms of national security, and the possibility of Soviet bloc reprisals.

QUESTION #8

Is there a requirement for DOS employees to report contacts with soviet bloc representatives to their agency?

If so, please describe how it works.

What is the history of this requirement?

What is done with this information? Is it reported to the FBI?

ANSWER

All Department of State employees, at their orientation security briefing, are informed of the regulation which requires them to report all contacts with communist bloc nationals, official or unofficial, in the U.S. or abroad, to their supervisor or appropriate security officer (Vol. II of Foreign Affairs Manual, Para. 236.3) Such a report is reviewed by the officer and, if relevant, is shared with any appropriate counter- intelligence agency. Although the latest issue of the regulation is dated September 26, 1980, the procedure has apparently been a long-standing policy.

QUESTION #9

In Congressman Ritter's opening statement, he indicated that while Tass and Izvestia are allowed in the House press gallery, the Voice of America is not. Is this, in fact, the case?

Is so, what is the justification or reason for this situation?

Does this situation also exist in the Senate press gallery or elsewhere?

ANSWER

It is true that a Voice of America correspondent is not permitted to become a member of the House and Senate Press/Radio Galleries. This is due to the House and Senate internal rules which prohibit a government organization from being admitted. The prohibition has been interpreted not to include Soviet governmental organizations, because the only press in the Soviet Union is state-owned and -operated.

QUESTION #10

Would you please compare the restrictions now placed on our diplomats, journalists, tourists, etc., in communist countries with those restrictions placed on their counterparts while in the United States?

ANSWER

The Soviets have no S.1959-type registration system which distinguishes Soviets from Western nationals. While it is true that American diplomats and journalists must first receive prior approval from the Ministry of Foreign Affairs before obtaining appointments or attending sessions of the Supreme Soviet, Soviet citizens themselves do not enjoy any greater access. Public sessions of the Supreme Soviet are rare and ceremonial in nature, and tourists may not visit office areas. Moreover, although the Supreme Soviet nominally serves a legislative role equivalent to that of Congress, its true power is miniscule in comparison. Access to the real decision-makers in the Soviet Union is virtually impossible for anyone, Soviet or American, to achieve.

QUESTION #11

In what ways does the Department foresee that communist countries may impose greater restrictions as a result of the enactment of S.1959?

ANSWER

At the present time, U.S. contacts with Supreme Soviet officials are infrequent. This is especially true now because the present climate of U.S. - Soviet relations has discouraged visits by U.S. Congressional delegations. If a controls policy was enacted for contacts between U.S. Congress and Soviet citizens, it is difficult to predict what new restrictions Soviet authorities might well choose to levy on U.S. citizens, since our contacts with Supreme Soviet officials and other officials is already severely limited. However, any new restrictions would be extremely easy for the Soviet authorities to enforce. Conversely, U.S. controls would be very hard to enforce without compromising the present access to Congressional sessions and offices available to the general public. In addition, the greater risk is that the Soviets will retaliate in other spheres, such as travel, which will be far more harmful than restrictions on U.S. access to the Supreme Soviet or other government officials.

QUESTION #12

Would the information required by S.1959 be of benefit to the DOS? The DOJ? The FBI?

ANSWER

While we cannot speak for the DOJ or the FBI, we believe that, again because of the overbroad nature of S.1959, the DOS would likely be flooded with largely useless data.

QUESTION #13

With reference to the term "national of a communist country" as used in S.1959, as presently drafted, please list any people or categories of people that would be included in that class who the Department feels should not be. For each one, give the reasons why the Department feels they should not give notice as required by the bill.

Would not the waiver provision cover special situations?

Please furnish your recommended definition of "national of a communist country" and your rationale for said definition.

ANSWER

The term "national of a communist country" should not include any person who does not have some kind of agency or official relationship with his respective government. It should not, for example, include anti-communist refugees, children, cultural or sports figures, simple tourists, or aliens awaiting U.S. citizenship. An overbroad classification not only raises serious constitutional questions, but will force the compilation and storage of unnecessary information from innocent targets.

DOJ LETTER WITH PROPOSED DEFINITION OF

"AGENT OF A FOREIGN GOVERNMENT"

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 0 9 1982

Honorable Jeremiah Denton
Chairman, Subcommittee on
Security and Terrorism
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Denton:

The Attorney General has asked me to respond to your letter of June 8, 1982 regarding S.1963, a bill to amend 18 U.S.C. 951. You requested that the Department propose a definition for the term "agent of a foreign government" in current law.

The Department recommends the term "agent of a foreign government" be defined as an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official, except that such term should not include the following individuals:

(a) a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State;

(b) any officially and publicly acknowledged and sponsored official or representative of a foreign government;

(c) any officially and publicly acknowledged and sponsored member of the staff of, or employee of, an exempt officer, official or representative qualifying under subsection (a) or (b) who is not a United States citizen;

(d) any officer, official or representative of any news or press service or association, any newspaper, magazine, or periodical, or any radio, television or other broadcast medium;

(e) any person engaged in a legal commercial transaction.

We trust that this suggested language defining "agent of a foreign government" will be a starting point for further discussion with your subcommittee staff regarding this and other points raised in earlier testimony of Deputy Assistant Attorney General Mark Richard.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Please let me know if we can be of further assistance.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

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